

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION JACKIE FISHER,)) Plaintiff,)) VS.) C.A. NO. 4:08-cv-01273) UNIVERSITY OF TEXAS MEDICAL) BRANCH and DAVID WATSON,)) Defendants.) ***** ORAL DEPOSITION OF MARY GOTCHER AUGUST 27, 2009 ***** ORAL DEPOSITION OF MARY GOTCHER, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on August 27, 2009, from 10:21 a.m. to 3:46 p.m., before Lorri Lucas, CSR in and for the State of Texas, reported by machine shorthand, at the offices of TDCJ Conference Center, Huntsville, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.	1 INDEX 2 PAGE 3 Appearances..... 2 4 MARY GOTCHER: 5 Examination by Ms. Miller..... 4 6 Signature and Changes..... 137 7 Reporter's Certificate..... 139 8 EXHIBITS 9 NO. DESCRIPTION PAGE 10 1 Document titled "Mary Gotcher Director 62 of Nurses, Northern Division" Fisher-200690-200692 11 2 UTMB Employee General Information 80 dated 6/25/04 Fisher-10077-10082 12 13 3 E-mail dated 1/12/06 Fisher-200263, 92 200265, 200267, 200269, 200271, 200273, 200275, 200277 14 15 4 Memo dated 1/27/06 Fisher-200249-200251 94 16 17 5 Memo dated 3/1/06 Fisher-100526 100 18 19 6 E-mail dated 3/25/06 UTMB-1369-1370 107 20 21 7 Memo dated 4/7/06 UTMB-1351 107 22 23 8 Letter dated 4/11/06 Fisher-200068-200071 116 24 25 9 Letter dated 4/12/06 Fisher-200072 117 10 Letter dated 5/2/06 Fisher-100212 120 11 UTMB-CMC Employee Task Force Report of 131 Recommendations August 2006 Executive Summary Fisher-100435-100442
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1 APPEARANCES 2 3 FOR THE PLAINTIFF: 4 Ms. Jo Miller Law Office of Jo Miller, PLLC 505 North Main 5 Carriage House Conroe, Texas 77301 6 (936) 539-4400 7 8 9 FOR THE DEFENDANTS: 10 Mr. Sam Lively Assistant Attorney General General Litigation Division 11 P.O. Box 12548 Austin, Texas 78711-2548 12 (512) 463-2120 13 Ms. Cari G. Bernstein Department of Legal Affairs 14 Rebecca Sealy Hospital, Room 4.254 301 University Boulevard 15 Galveston, Texas 77555-0171 (409) 747-8735 16 17 18 ALSO PRESENT: 19 Ms. Jackie Fisher 20 21 22 23 24 25	1 MARY GOTCHER, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. MILLER: 5 Q Mary Gotcher. Right? 6 A "GO-cher." 7 Q "GO-cher." 8 A Um-hmm. 9 Q Would you spell your name for the record, 10 please? 11 A G-O-T-C-H-E-R. 12 Q M-A-R-Y? 13 A Yeah. 14 Q And, Ms. Gotcher, have you had your 15 deposition taken before? 16 A Yes. 17 Q Okay. So you're familiar with the ground 18 rules or other people's ground rules and you sat 19 there yesterday during the deposition of Ms. Fisher. 20 A Yes. 21 Q And you heard Mr. Cummings describe his 22 ground rules for the deposition. 23 A Yes. 24 Q And mine are no different. If you have a 25 question you don't understand what I'm asking you,

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<p>5</p> <p>1 my intent is to get answers to the questions that 2 I'm asking, and so if you don't understand my 3 question, I'm not going to get the answer that's the 4 correct answer, which is your real answer. So stop 5 me. Ask me to repeat it. I don't mind. I'm pretty 6 flexible about everything. I just want to make sure 7 we get good answers. 8 A Yes, ma'am. 9 Q So how many times have you had your 10 deposition taken? 11 A Once. 12 Q Once. And what was that? 13 A It was -- 14 Q The subject of that case? 15 A -- a private lawsuit. 16 Q Okay. And that -- we just had an example 17 of where, as Mr. Cummings described yesterday, you 18 kind of anticipated what I was going to say and you 19 started to answer it before. And it's hard for the 20 court reporter and we like to keep her on our side 21 because we use her on a number of occasions. So if 22 you let me complete my questions and then I'll try 23 to give you the same courtesy and time and let you 24 complete yours without asking another question on 25 top of your answer. Okay?</p>	<p>7</p> <p>1 A Actually, I don't -- it's been some time 2 ago and I don't even remember what they were. 3 Q Okay. And in preparation with your 4 attorney, do you have your own attorney -- 5 A No. 6 Q -- other than the UTMB attorneys? 7 A With Mr. Lively. 8 Q Okay. And you're located here in 9 Huntsville. Is that correct? 10 A No, ma'am. 11 Q Okay. Where is your -- oh, Palestine. 12 Where's your office? 13 A In Palestine, Texas. 14 Q Okay. Need just a little personal 15 information and we won't put this in the deposition 16 but I'll write it down in case we need to get in 17 contact with you further. What's your physical home 18 address? 19 A (Redacted) 20 Q And do you have a land-based phone there? 21 A Yes. 22 Q And what's that number? 23 A (Redacted) 24 Q Okay. And what's the highest educational 25 level you've achieved, Ms. Gotcher?</p>
<p>6</p> <p>1 A Fine. 2 Q Great. Thanks. Is there any reason that 3 you can't give good and accurate answers today? 4 A No. 5 Q You've not taken any medication, any 6 reason that your thinking and your ability to 7 communicate is impaired. 8 A No. 9 Q Okay. And did you have a chance to 10 review -- without telling me what you spoke about, 11 did you have a chance to review and prepare for this 12 deposition with your attorneys, one or the other or 13 both, with the attorneys for UTMB? 14 A Yes. 15 Q Okay. And in that process, again without 16 telling me what you spoke about, did you have the 17 opportunity to review any documents in preparation 18 for today? 19 A I didn't review anything special for 20 today, no. 21 Q Well, have you had a chance to review any 22 documents in preparation for this lawsuit? 23 A I reviewed some documents in preparation 24 for meeting with my attorney. 25 Q Okay. And what documents did you review?</p>	<p>8</p> <p>1 A I have a postmaster's degree with my nurse 2 practitioner's -- my family nurse practitioner's 3 licensure. 4 Q Okay. And when you say "postmaster's," is 5 that a master of science? 6 A Yes. 7 Q And where is that from? 8 A University of Texas Medical Branch. 9 Q And that's at Galveston? 10 A Yes. 11 Q When did you achieve that? 12 A Ten years ago, I got my nurse 13 practitioner's licensure. 12 years ago -- longer 14 than that. 14 years ago, I got my master's degree 15 in nursing administration, specialty in nursing 16 administration. 17 Q And where was your master's? 18 A At the University of Texas Medical Branch. 19 Q Okay. And if we're saying 14 years ago, 20 is that -- 21 A That's a guess. 22 Q Okay. And so if I can do the math, 2009. 23 1995? 24 A Probably close. 25 Q Okay. Around?</p>

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<p style="text-align: right;">9</p> <p>1 A Around.</p> <p>2 Q Okay. That's not critical that we have</p> <p>3 that exact one. All right. And so you have a</p> <p>4 master's in nursing?</p> <p>5 A Yes.</p> <p>6 Q And your post master's, what category is</p> <p>7 that, would that be?</p> <p>8 A Family nurse practitioner.</p> <p>9 Q And where did you do -- prior to your</p> <p>10 master in nursing, where did you go to school?</p> <p>11 A Obtained a bachelor's degree in nursing</p> <p>12 from the University of Texas Medical Branch.</p> <p>13 Q Again, in Galveston?</p> <p>14 A Yes.</p> <p>15 Q Are you from Galveston?</p> <p>16 A No.</p> <p>17 Q Okay. Are you from Texas?</p> <p>18 A Yes.</p> <p>19 Q Okay. All right. And where did you go to</p> <p>20 high school?</p> <p>21 A I had an associate's degree before that.</p> <p>22 Do you want to know about that?</p> <p>23 Q Surely. I skipped one. I'm sorry. I</p> <p>24 want to hear them all.</p> <p>25 A I had an associate's degree for my first</p>	<p style="text-align: right;">11</p> <p>1 Q And how old is she?</p> <p>2 A 28.</p> <p>3 Q And that's a good thing that she doesn't</p> <p>4 live with you anymore; isn't it?</p> <p>5 A Yes, it is.</p> <p>6 Q Okay. Anybody else work for the State in</p> <p>7 your family?</p> <p>8 A No.</p> <p>9 Q Okay. Let's talk about your employment</p> <p>10 history.</p> <p>11 A Oh.</p> <p>12 Q Well, let me cut that short. Among the</p> <p>13 things that were provided to the EEOC was an</p> <p>14 application that you completed when you applied for</p> <p>15 work at UTMB, and if we would refer to that</p> <p>16 application, would it be correct, as stated, as to</p> <p>17 your prior work history?</p> <p>18 A I don't remember exactly what's on it but</p> <p>19 I would assume that it is correct.</p> <p>20 Q Okay. And we could rely on that in terms</p> <p>21 of your past employment history.</p> <p>22 A Yes.</p> <p>23 Q So let's just limit it to UTMB. How's</p> <p>24 that?</p> <p>25 A That's fine.</p>
<p style="text-align: right;">10</p> <p>1 RN licensure and I got it from Brazosport College</p> <p>2 and Galveston College. It was a cooperative program</p> <p>3 that they had between the two colleges.</p> <p>4 Q And when was that?</p> <p>5 A I graduated with that in 1979.</p> <p>6 Q I'm ultimately going to get around to</p> <p>7 getting you to disclose how long you've been doing</p> <p>8 this. And any other advanced, beyond-high-school</p> <p>9 education?</p> <p>10 A No.</p> <p>11 Q Okay. And where did you go to high</p> <p>12 school?</p> <p>13 A Brazoswood High School.</p> <p>14 Q Brazoswood?</p> <p>15 A Yes.</p> <p>16 Q And where is that located?</p> <p>17 A Clute, Texas. Clute, Texas.</p> <p>18 Q Clute. And what year did you graduate</p> <p>19 from there?</p> <p>20 A 1976.</p> <p>21 Q Okay. Do you have a family?</p> <p>22 A Yes.</p> <p>23 Q And what -- who and which --</p> <p>24 A I have a spouse that lives with me. I</p> <p>25 have a daughter that does not live with me.</p>	<p style="text-align: right;">12</p> <p>1 Q And when did you start at UTMB?</p> <p>2 A 1999.</p> <p>3 Q And what did you start as?</p> <p>4 A As a nurse practitioner.</p> <p>5 Q On a scale of understanding how the</p> <p>6 ranking or the pecking order goes, could you start</p> <p>7 at the bottom of the nursing scale and go up the top</p> <p>8 for me where -- LVNs and RNs and you've got</p> <p>9 assistant nurse managers and nurse managers. How</p> <p>10 does that all work?</p> <p>11 A I don't know that I understand your</p> <p>12 question for sure.</p> <p>13 Q Okay. Well, let me try it again. If</p> <p>14 there were an organizational chart of all the</p> <p>15 nursing staff of UTMB -- and because it's TDC, we're</p> <p>16 just going to limit our conversation to the UTMB/TDC</p> <p>17 structure -- what would be at the very bottom row?</p> <p>18 What level or what position?</p> <p>19 A Well, we can go all the way down to</p> <p>20 nursing assistants.</p> <p>21 Q Okay.</p> <p>22 A And then there's -- in our -- in our --</p> <p>23 Q Is that an abbreviation that you call</p> <p>24 these people? Because I've read so many letters, I</p> <p>25 get confused. When you refer to them in notes or</p>

<p style="text-align: right;">13</p> <p>1 correspondence?</p> <p>2 A We -- they're in a group called unlicensed</p> <p>3 assistant personnel.</p> <p>4 Q Okay. But -- okay. So assistant nurses</p> <p>5 and they're unlicensed.</p> <p>6 A Those aren't assistant nurses.</p> <p>7 Q All right.</p> <p>8 A I did not say assistant nurses.</p> <p>9 Q Sorry.</p> <p>10 A I said nurse assistants.</p> <p>11 Q Nurse assistants. Okay. And they're not</p> <p>12 licensed nurses.</p> <p>13 A No.</p> <p>14 Q Okay. Let's start with the ones that have</p> <p>15 licenses. That's what I really care about.</p> <p>16 A That's an LVN.</p> <p>17 Q Okay. That's the -- would be at the</p> <p>18 bottom of the license.</p> <p>19 A Yes.</p> <p>20 Q And "LVN" stands for?</p> <p>21 A Licensed vocational nurse.</p> <p>22 Q Okay.</p> <p>23 A Then the RN is next.</p> <p>24 Q And the "RN" stands for?</p> <p>25 A Registered nurse.</p>	<p style="text-align: right;">15</p> <p>1 A There's mid-level providers, is what</p> <p>2 they're called.</p> <p>3 Q Okay.</p> <p>4 A And they're PAs. That's a group of</p> <p>5 physician's assistants or nurse practitioners.</p> <p>6 Q So PAs are physician assistants and nurse</p> <p>7 practitioners?</p> <p>8 A Practitioners or advanced practice nurses.</p> <p>9 They're licensed by the board of nurses and they can</p> <p>10 have different specialties: Adult, family, maternal</p> <p>11 health, geriatric. Nurse practitioners can have</p> <p>12 different specialties.</p> <p>13 Q Okay. And are they noted by what</p> <p>14 initials?</p> <p>15 A NP is all of them but I'm recognized with</p> <p>16 an FNP, which is a family nurse practitioner.</p> <p>17 Q So it would identify your specific</p> <p>18 specialty?</p> <p>19 A Yes.</p> <p>20 Q Okay. Do you have to have a specialty to</p> <p>21 be a nurse practitioner?</p> <p>22 A Yes.</p> <p>23 Q Okay.</p> <p>24 A You have to choose.</p> <p>25 Q All right. And so after the -- and those</p>
<p style="text-align: right;">14</p> <p>1 Q Okay. And in terms of training among --</p> <p>2 between these two, what's the difference in the</p> <p>3 requirement?</p> <p>4 A The LVN is very -- the board requires the</p> <p>5 LVN be trained in task, nursing task procedure,</p> <p>6 direct care, patient care kind of tasks. An RN is</p> <p>7 differentiated by their critical thinking skills and</p> <p>8 putting more of a cooperative plan, patient care</p> <p>9 plan together, rather than just doing a task, and</p> <p>10 coordinating care between the different disciplines.</p> <p>11 Q Okay. And is there an educational</p> <p>12 difference?</p> <p>13 A Yes, there is.</p> <p>14 Q And what would that be?</p> <p>15 A Well, it depends whether you're getting an</p> <p>16 associate degree or a bachelor's degree.</p> <p>17 Q Okay.</p> <p>18 A But both of those pass the same state</p> <p>19 boards for the RNs. Educationally, an LVN is only</p> <p>20 about a nine-month course, nine-month to a year. An</p> <p>21 RN is -- at the minimum, is a two-year degree with</p> <p>22 an associate's.</p> <p>23 Q Okay. So on up the food chain in the</p> <p>24 structure of UTMB and Texas Department of Criminal</p> <p>25 Justice.</p>	<p style="text-align: right;">16</p> <p>1 would be the mid-level providers. Correct?</p> <p>2 A And after that are the physicians.</p> <p>3 Q Okay. And where do the nurse managers and</p> <p>4 the assistant nurse managers and that structure,</p> <p>5 where does that fit in?</p> <p>6 A I've just named to you clinical side of</p> <p>7 how things work clinically. Assistant nurse</p> <p>8 managers, nurse managers, medical directors are</p> <p>9 in -- on the administrative side of the house. They</p> <p>10 are RNs for nursing. The assistant nurse managers</p> <p>11 and nurse managers are all RNs.</p> <p>12 Q And on the administrative side, is the</p> <p>13 lowest-level administrator an assistant nurse</p> <p>14 manager?</p> <p>15 A In our system, yes.</p> <p>16 Q Okay. Then it would be the nurse manager?</p> <p>17 A Yes.</p> <p>18 Q And what comes after that?</p> <p>19 A There is a district nurse manager and then</p> <p>20 there is my position, which is nursing director of</p> <p>21 outpatient services. There is also a director of</p> <p>22 inpatient services.</p> <p>23 Q And that would be a nursing director of</p> <p>24 inpatient? Who --</p> <p>25 A Yes.</p>

<p style="text-align: right;">17</p> <p>1 Q Who is that?</p> <p>2 A Gary Eubank.</p> <p>3 Q Gary?</p> <p>4 A (Moving head up and down) Eubank.</p> <p>5 Q Eubanks? Okay. And so at the time that</p> <p>6 the facts of this lawsuit took place, we're speaking</p> <p>7 really about Ms. Fisher being an assistant nurse</p> <p>8 manager that she started as.</p> <p>9 A Yes.</p> <p>10 Q And then she was promoted to a nurse</p> <p>11 manager.</p> <p>12 A Yes.</p> <p>13 Q And then she was demoted to an assistant</p> <p>14 manager.</p> <p>15 A Yes.</p> <p>16 Q And then she was promoted back to a nurse</p> <p>17 manager.</p> <p>18 A Yes.</p> <p>19 Q Okay. There was some discussion about a</p> <p>20 clinical nurse III position. Where does that fall?</p> <p>21 A That's the RN.</p> <p>22 Q Okay. And it's not an administrative</p> <p>23 position.</p> <p>24 A No.</p> <p>25 Q Okay. How long have you been the nursing</p>	<p style="text-align: right;">19</p> <p>1 here. You're making me work.</p> <p>2 THE WITNESS: Close. Close.</p> <p>3 Q (BY MS. MILLER) Is that 2003?</p> <p>4 A Yes.</p> <p>5 Q All right.</p> <p>6 A That's close.</p> <p>7 Q Okay. And were you the director of</p> <p>8 nursing for the northern division at the time that</p> <p>9 Ms. Fisher was made -- or was first promoted to be a</p> <p>10 nurse manager?</p> <p>11 A Yes.</p> <p>12 Q So --</p> <p>13 A I think so, yes.</p> <p>14 Q That was under your tenure --</p> <p>15 A Yes.</p> <p>16 Q -- that she was promoted.</p> <p>17 A Yes.</p> <p>18 Q Did you have any involvement in that</p> <p>19 promotion?</p> <p>20 A No.</p> <p>21 Q You don't approve promotions at that</p> <p>22 level?</p> <p>23 A I'm usually notified that -- of who</p> <p>24 they're going to put in the facility nurse manager</p> <p>25 position, but I don't make the decision. The</p>
<p style="text-align: right;">18</p> <p>1 director of outpatient services?</p> <p>2 A We've reorganized recently and that's a</p> <p>3 new title for me. We just reorganized in-service</p> <p>4 line to inpatient and outpatient within the last six</p> <p>5 months.</p> <p>6 Q Okay. Prior to that, what was your title?</p> <p>7 A We were divided geographically, north and</p> <p>8 south, and I was the director of nursing for the</p> <p>9 northern division.</p> <p>10 Q And northern division included what?</p> <p>11 A Anything Huntsville and north.</p> <p>12 Q All right. And the director of the</p> <p>13 southern portion of it?</p> <p>14 A Was Gary Eubank.</p> <p>15 Q Was Gary. Okay. So you two still have</p> <p>16 essentially the same responsibilities, just</p> <p>17 different divisions, different slice of the pie, so</p> <p>18 to speak?</p> <p>19 A Yes.</p> <p>20 Q And at what point were you named director</p> <p>21 of nursing for the northern division?</p> <p>22 A It's been six years.</p> <p>23 Q Okay. Is that 2003?</p> <p>24 MS. FISHER: It would be 2003.</p> <p>25 MS. MILLER: I have to do the math</p>	<p style="text-align: right;">20</p> <p>1 district managers made that --</p> <p>2 Q And in that time --</p> <p>3 A -- make those decisions.</p> <p>4 Q Sorry? I do that to you. Were you</p> <p>5 finished?</p> <p>6 A Yes.</p> <p>7 Q Okay. And at the time she was promoted,</p> <p>8 the decision maker in that promotion was David</p> <p>9 Watson.</p> <p>10 A Yes.</p> <p>11 Q Is that correct? Okay. So prior to the</p> <p>12 time that you were promoted to the director of</p> <p>13 nursing for the northern division, what position did</p> <p>14 you hold with UTMB?</p> <p>15 A I was a nurse practitioner. I worked</p> <p>16 as -- in the -- in the facilities.</p> <p>17 Q Were you at all a nurse manager?</p> <p>18 A Not during that time, no.</p> <p>19 Q Okay. And how long were you a nurse</p> <p>20 practitioner in the facilities?</p> <p>21 A Four years.</p> <p>22 Q What facilities did you work in?</p> <p>23 A Coffield, Michael.</p> <p>24 Q Coffield?</p> <p>25 A Coffield and Michael were the major.</p>

<p style="text-align: right;">21</p> <p>1 Q Are those up north?</p> <p>2 A Yes.</p> <p>3 Q Okay. And at -- prior to those four</p> <p>4 years, what did you do for UTMB?</p> <p>5 A I didn't work for UTMB.</p> <p>6 Q All right. So prior to the management --</p> <p>7 prior to the time you started working for UTMB, I</p> <p>8 know I said I have your resume, but tell me about</p> <p>9 the managerial positions that you held, the ones</p> <p>10 that would require managing-people skills.</p> <p>11 A Throughout my career, I have been -- I've</p> <p>12 moved back and forth between clinical and</p> <p>13 administrative roles. I've held several</p> <p>14 administrative roles at Brazosport Hospital in Lake</p> <p>15 Jackson, Texas, over the ICU and over their medical</p> <p>16 floor. I've also worked three years at the</p> <p>17 University of Texas Medical Branch in Galveston as a</p> <p>18 manager over their urology floor and over their</p> <p>19 recovery room and over their surgical ICUs.</p> <p>20 Q Okay. I think I can read my writing. I'm</p> <p>21 not sure. Surgical ICUs?</p> <p>22 A Yes.</p> <p>23 Q And Brazosport -- is that a hospital?</p> <p>24 A Yes.</p> <p>25 Q All right. When you were in charge of the</p>	<p style="text-align: right;">23</p> <p>1 administration, broad concepts?</p> <p>2 A I guess broad concepts are going to be</p> <p>3 budgeting, finance, human resource management,</p> <p>4 employment management, normal school.</p> <p>5 Q Normal school stuff. Okay. And then</p> <p>6 working for Brazosport or UTMB, did you receive any</p> <p>7 additional training through the companies you worked</p> <p>8 for to assist you with your management skills?</p> <p>9 A I have made myself available for lots of</p> <p>10 training throughout my 32 years as an RN.</p> <p>11 Q Okay. Well, then let's limit it to when</p> <p>12 you joined UTMB. What kind of special training, in</p> <p>13 addition to that that you came with, have you had to</p> <p>14 assist you in your management skills?</p> <p>15 A Are you talking about the last ten years</p> <p>16 that I've been here?</p> <p>17 Q That's fine. I can limit it to ten.</p> <p>18 A Okay. That's the time that I've been here</p> <p>19 at UTMB, so --</p> <p>20 Q Yes.</p> <p>21 A -- I believe that's what you asked. I was</p> <p>22 making sure.</p> <p>23 Q Yes.</p> <p>24 A UTMB avails us of many management and</p> <p>25 leadership courses throughout those ten years from</p>
<p style="text-align: right;">22</p> <p>1 ICU, how many people reported to you?</p> <p>2 A I don't remember.</p> <p>3 Q Can you give me a range?</p> <p>4 A 20.</p> <p>5 Q Okay. And how about on the --</p> <p>6 MS. FISHER: Medical floor?</p> <p>7 MS. MILLER: Medical floor? Thank</p> <p>8 you. Do you want a job?</p> <p>9 Q (BY MS. MILLER) On the medical floor?</p> <p>10 A I probably had close to 40 employees.</p> <p>11 Q And how about on -- when you worked for</p> <p>12 UTMB those three years when you were in urology,</p> <p>13 number of employees?</p> <p>14 A Probably 25.</p> <p>15 Q Recovery room?</p> <p>16 A Probably close to the same.</p> <p>17 Q Okay. And surgical ICU?</p> <p>18 A Probably more like 40.</p> <p>19 Q Okay. Before you came to UTMB, did you</p> <p>20 have any special training in management and people</p> <p>21 skills, HR-type training?</p> <p>22 A Yes. I have a master's degree, nursing</p> <p>23 administration.</p> <p>24 Q And what are some of the concepts that you</p> <p>25 studied in receiving that degree in nursing</p>	<p style="text-align: right;">24</p> <p>1 servant leadership to dealing with difficult people</p> <p>2 to -- those are still available by our education</p> <p>3 department and I've availed myself of all those</p> <p>4 classes that were available there.</p> <p>5 Q Are they computer-based classes or --</p> <p>6 A Not all of them. Some of them are</p> <p>7 classroom classes and some are computer-based</p> <p>8 classes.</p> <p>9 Q And so the record of that is in your</p> <p>10 personnel file, I'm sure.</p> <p>11 A I'm sure.</p> <p>12 Q Okay. And what about Texas Department of</p> <p>13 Criminal Justice? Did you get any special training</p> <p>14 through that or --</p> <p>15 A No.</p> <p>16 Q -- that interface doesn't provide for</p> <p>17 additional training for you?</p> <p>18 A No. They're -- we contract through --</p> <p>19 Q How do you -- how are -- is the</p> <p>20 information disseminated from TDCJ to you in terms</p> <p>21 of that integration, if you need to know TDCJ</p> <p>22 policies and procedures?</p> <p>23 A We have a TDCJ Health Services Division</p> <p>24 that we work with very closely and we cooperatively</p> <p>25 do those -- make those decisions with them as a</p>

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<p>1 partner, as a contractual partner, and we have that 2 manual available to us at any time. 3 Q Okay. How long have you known Jackie 4 Fisher? 5 A Probably the last six years. 6 Q And how did you first come to meet 7 Ms. Fisher? 8 A I met her as one of my employees when I 9 became the district nurse manager or the director. 10 Q And describe that -- the instance or how 11 you facilitate meeting your employees. What did you 12 do? 13 A Well, when I first became a nurse manager, 14 I visited each one of the facilities with their 15 managers and with the management teams and visited 16 each facility and spoke with managers about their 17 particular facility and the needs and the mission on 18 the different facilities and what their particular 19 needs were. 20 Q Okay. And that was in 2003 when you first 21 started? 22 A Um-hmm. 23 Q How often did you visit the facilities 24 after that initial get-acquainted visit? 25 A That's varied depending on the facility</p>	<p>1 Huntsville. I spend time in their offices, as well, 2 and meeting with them for policy and procedure 3 reasons. I spend time in Galveston with our main 4 office location in Galveston, with meetings and 5 functions there, as well. So it could be for 6 various things. 7 Q Okay. So after you first met Jackie 8 Fisher in 2003, what -- did you have occasion to 9 meet -- or to communicate with her subsequent to 10 that? 11 A Not usually. Saw her at conferences, knew 12 who she was. But, no. I -- there was a district 13 manager that was her direct supervisor. 14 Q And so your role would really be to work 15 directly with him, not with -- 16 A Yes. 17 Q -- Ms. Fisher. Okay. When did you first 18 become aware that Ms. Fisher was complaining of 19 racial discrimination at UT -- by members of 20 management at UTMB? 21 A I have no idea. 22 Q Okay. And -- 23 A I do not remember. 24 Q -- do you remember conceptually what it 25 was that you were made aware of, if you don't</p>
26	28
<p>1 and what the needs were. 2 Q Okay. So once a month? Once a year? 3 A I have no -- there is no -- there are some 4 units that I've been at weekly. There are some 5 units that I have not been at in a year. So that is 6 very different, depending on the needs of each 7 particular facility. 8 Q Okay. So -- and your office is in 9 Palestine? 10 A Yes. 11 Q All right. So a typical week in 12 Palestine, would you be there, primarily, or would 13 you be out in the field? 14 A I'm out of town from my office at least 15 two to three days a week. 16 Q And would that have been true in 2006 and 17 2007? 18 A Yes. 19 Q And those two to three days a week 20 would -- normally those would be spent visiting 21 on-site locations? 22 A Sometimes. 23 Q And what other out-of-the-office kind of 24 activities would you participate in? 25 A TDCJ Health Services is here in</p>	<p>1 remember the time? 2 A No. I don't. I remember her concern. 3 Probably after the on-site visit is when I knew that 4 she was concerned. 5 Q Okay. And that would be the on-site visit 6 in January of 2006? 7 A Yes. 8 Q Let's talk about that specifically and 9 that. What precipitated that particular visit that 10 you -- and I just know from other discussions -- 11 that you made and you were accompanied, I believe, 12 by Ms. Melton? 13 A Yes. 14 Q Okay. What precipitated that visit? 15 A Multiple things precipitated that visit. 16 I had been having discussions with Mr. Watson about 17 the performance of Estelle facility. I had received 18 several e-mails from some employees at the Estelle 19 facility that were unhappy. The turnover was 20 increasing at that facility and Mr. Watson felt that 21 he had made all the assessment and done all the 22 changes that he could do, and he and I agreed that I 23 would facilitate continued improvement at Estelle by 24 doing an on-site investigation to see what I could 25 find different.</p>

<p style="text-align: right;">29</p> <p>1 Q And that was a discussion you had directly 2 with Mr. Watson? 3 A Yes. 4 Q Was Ms. Melton involved in that 5 discussion? 6 A No. 7 Q How was it that she became a part of the 8 visit? 9 A After I decided to make a visit -- I don't 10 usually make those type of visits without HR with 11 me. 12 Q Okay. And so at this point, the 13 discussion is between and you Mr. Watson and you've 14 invited Ms. Melton. How did you determine when to 15 go and do this? 16 A The next time I had available, I went to 17 Estelle, and the next time Georgia had -- Ms. Melton 18 had available time, we planned the trip. 19 Q And that turned out to be in January, mid 20 January? 21 A I don't remember. 22 Q 17th and 18th? 23 A I don't remember. 24 MS. MILLER: Or January 9th, you're 25 telling -- okay.</p>	<p style="text-align: right;">31</p> <p>1 Q Oh. Okay. And we have a cold record here 2 and it's going to be just a plain black-and-white 3 page, but just for the record, you're Caucasian. Is 4 that correct? 5 A Yes. 6 Q And how about Mrs. Anderson -- 7 Ms. Anderson? 8 A She's Caucasian. 9 Q And how about Ms. Darby? 10 A She's Caucasian. 11 Q And Ms. Lauder? 12 A She's Caucasian. 13 Q And Ms. Moreau? 14 A I don't know. 15 Q And in terms of the turnover increasing, 16 how do you monitor the turnover? 17 A By the number of people leaving. 18 Q Okay. So that's the measure. Seems like 19 a good way to do it. How -- do you get a report? 20 Do you print a report? Do you monitor it monthly? 21 Is it an annual turnover rate? How do you look at 22 it? 23 A We look at it monthly. We get monthly 24 reports, as well as annual reports. 25 Q And that would be by facility or by</p>
<p style="text-align: right;">30</p> <p>1 Q (BY MS. MILLER) And how did you notice, 2 beside how -- who did you notice that you were going 3 to be making the visit? 4 A Mr. Watson put out the notice that we 5 would be coming and... 6 Q And was that a written notice? 7 A He e-mailed it. 8 Q And do you recall to whom that would have 9 been distributed? 10 A No. 11 Q Okay. You indicated that you had received 12 several e-mails from employees or maybe -- strike 13 that. You received e-mails. I added the "several," 14 so I'll take that back. You received e-mails from 15 employees who were unhappy. Who were those 16 employees? 17 A Don't know that I can remember all of 18 them, but it seemed to be the nurse -- nurses in the 19 emergency room mostly. 20 Q Okay. 21 A I remember Ms. Anderson, Ms. Darby, 22 Ms. Lauder, and Ms. Moreau being the ones that I can 23 remember, others that I can't. 24 Q And Moreau is spelled? 25 A M-O-R-E-A-U.</p>	<p style="text-align: right;">32</p> <p>1 individual manager? 2 A By facility. 3 Q And when Mr. Watson said he felt he had 4 done all he could, did he -- how did he communicate 5 that to you? 6 A In a conversation on the phone. 7 Q Okay. Was there any written 8 memorialization of that conversation? 9 A Not that I remember or not that I know. 10 Q And when he said, indicated to you he had 11 done all he could, what did he indicate to you that 12 he had done? 13 A We had had multiple conversations about 14 the Estelle facility and the fact that things 15 weren't running as smoothly as he felt they should 16 and he was trying to identify where the issues were 17 to improve them and he had been unable to make 18 headway with identifying exactly where the issues 19 were. 20 Q Okay. So what had he done? So he had 21 trouble identifying the issues. Had he done 22 anything? 23 A Certainly he had but I don't -- you'll 24 have to ask him. I don't know. 25 Q Okay. So you didn't ask him that.</p>

<p style="text-align: right;">33</p> <p>1 A No.</p> <p>2 Q And did you have any part in communicating</p> <p>3 notice of your visit to the Estelle Unit?</p> <p>4 A No.</p> <p>5 Q When you arrived at the Estelle Unit, what</p> <p>6 did you do?</p> <p>7 A Ms. Melton and I told Mr. Watson we were</p> <p>8 there. We were -- found us a room, a conference</p> <p>9 room, that was avail -- that was private so that</p> <p>10 employees could feel like they weren't overheard.</p> <p>11 And it was also not out in the hallway on a nursing</p> <p>12 unit, so people -- it was down in the offices so</p> <p>13 that people couldn't see, coming and going, if</p> <p>14 people did not want others to know that they were</p> <p>15 coming or leaving.</p> <p>16 Q And so you had a conference room. Then</p> <p>17 what did you do?</p> <p>18 A We started having people come in and --</p> <p>19 Q How was it determined who would come in?</p> <p>20 A They determined who came in. We made the</p> <p>21 invite, told them we were here.</p> <p>22 Q How did you make that invite?</p> <p>23 A Through Mr. Watson's e-mail.</p> <p>24 Q So it was kind of like "We're going to be</p> <p>25 here if you want to stop in"?</p>	<p style="text-align: right;">35</p> <p>1 A Still in the system.</p> <p>2 Q Another nurse --</p> <p>3 A Still work -- yes.</p> <p>4 Q Assistant nurse manager.</p> <p>5 A Gayle McCartney.</p> <p>6 Q And who all came to your room?</p> <p>7 A I don't remember who all came. I did --</p> <p>8 Ms. Melton conducted the interviews with my -- with</p> <p>9 me listening and interjecting when I had specific</p> <p>10 questions, but the interviews were mostly done by</p> <p>11 HR, Ms. Melton.</p> <p>12 Q Okay. But you were present during the</p> <p>13 interviews.</p> <p>14 A Sure.</p> <p>15 Q All right. And so there would certainly</p> <p>16 be a record of what these employees said.</p> <p>17 A She took notes.</p> <p>18 Q Okay. So there are notes of the --</p> <p>19 A I don't know where her notes are.</p> <p>20 Q Okay. Was there any kind of form that was</p> <p>21 filled out or --</p> <p>22 A No.</p> <p>23 Q -- any specific questions that were asked?</p> <p>24 A Well, no.</p> <p>25 Q Any consistent, you know --</p>
<p style="text-align: right;">34</p> <p>1 A Um-hmm. Um-hmm.</p> <p>2 Q Did you contact any specific individuals</p> <p>3 or initiate any conversation with specific</p> <p>4 individuals?</p> <p>5 A The individuals that came.</p> <p>6 Q Other than the ones that, on their own</p> <p>7 initiative, showed up, did you seek specific</p> <p>8 employees to speak with?</p> <p>9 A No.</p> <p>10 Q Did Mr. Watson send specific employees for</p> <p>11 you to speak with?</p> <p>12 A I have no idea.</p> <p>13 Q Okay. And what level were these</p> <p>14 employees?</p> <p>15 A We had all levels of employees. We had</p> <p>16 RNs, LVNs, PCAs, and I don't know if we had nursing</p> <p>17 assistants or not. We had all levels of employees.</p> <p>18 Q Was there an assistant nurse manager at</p> <p>19 that facility?</p> <p>20 A There were two assistant nurse managers</p> <p>21 that worked for Ms. Fisher at that time.</p> <p>22 Q And who were they?</p> <p>23 A Mr. Aguilar and -- I'm losing her name. I</p> <p>24 don't remember her name. I see her face.</p> <p>25 Q Another --</p>	<p style="text-align: right;">36</p> <p>1 A Nothing formal.</p> <p>2 Q Nothing formal. Okay. Were the employees</p> <p>3 asked to make a statement?</p> <p>4 A I don't guess I understand.</p> <p>5 Q Were they asked to make a written</p> <p>6 statement?</p> <p>7 A No.</p> <p>8 Q No. So there are no written statements</p> <p>9 from the employees regarding this meeting.</p> <p>10 A No.</p> <p>11 Q These meetings.</p> <p>12 A No.</p> <p>13 Q And correct me if I'm wrong, but these</p> <p>14 meetings lasted for two days or you were there for</p> <p>15 two days?</p> <p>16 A We were there for two days.</p> <p>17 Q Okay.</p> <p>18 A We were there at different times those two</p> <p>19 days so we could reach --</p> <p>20 Q The different shifts.</p> <p>21 A -- and be available to the different</p> <p>22 shifts.</p> <p>23 Q See, I'm -- I did it again. I knew what</p> <p>24 you were going to say. And in the Estelle Unit,</p> <p>25 there were two nurse managers. Is that correct?</p>

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<p>1 Ms. Fisher and another nurse manager?</p> <p>2 A Yes.</p> <p>3 Q Okay. And so Ms. Fisher was a nurse</p> <p>4 manager over some of the employees, and who was the</p> <p>5 other nurse --</p> <p>6 A Most of the employees.</p> <p>7 Q Most of the employees. And do you recall</p> <p>8 how many nurse -- how many employees reported to</p> <p>9 Ms. Fisher?</p> <p>10 A No.</p> <p>11 Q Do you recall who the other nurse manager</p> <p>12 was?</p> <p>13 A Joyce Bonds.</p> <p>14 Q Joyce Bonds?</p> <p>15 A And she was over the geriatric center.</p> <p>16 Q Do you recall how many employees reported</p> <p>17 to her?</p> <p>18 A Very few. The geriatric center was only</p> <p>19 staffed 12 hours a day, it was not staffed at night,</p> <p>20 and it was a very small -- it's a very small</p> <p>21 facility.</p> <p>22 Q Okay. So there was some conversation</p> <p>23 yesterday that Ms. Fisher had 42 employees that</p> <p>24 reported to her?</p> <p>25 A (Moving head side to side)</p>	<p>1 A I don't know.</p> <p>2 Q Well, was there a time you left this</p> <p>3 conference room, this private conference room?</p> <p>4 A Oh, sure. Sure. We --</p> <p>5 Q And actually spoke to Mr. Aguilar out in</p> <p>6 the facility; didn't you?</p> <p>7 A It's possible.</p> <p>8 Q Did you speak to anyone other than</p> <p>9 Mr. Aguilar out in the facility?</p> <p>10 A Not that I recall.</p> <p>11 Q And did you go to the facility where Joyce</p> <p>12 Bonds was in charge of that particular facility?</p> <p>13 A No. And I did not go to the building that</p> <p>14 Ms. Fisher was in charge of, also, and I did not go</p> <p>15 out to the high security that she's in charge of,</p> <p>16 also. I stayed only in the one facility.</p> <p>17 Q Okay. And what facility was that?</p> <p>18 A The RMF, the regional medical facility.</p> <p>19 Q And is that where Mr. Aguilar worked?</p> <p>20 A I don't know where she had him assigned.</p> <p>21 Q Okay. And maybe I asked you this but if I</p> <p>22 didn't -- and did you personally seek out anyone</p> <p>23 other than Mr. Aguilar?</p> <p>24 A No.</p> <p>25 Q Okay. So you had a conference room. You</p>
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<p>1 Q You wouldn't have any reason to doubt</p> <p>2 that.</p> <p>3 A I wouldn't have any reason to doubt that.</p> <p>4 Q How many employees came and spoke to you?</p> <p>5 A I don't remember exactly. It's been four</p> <p>6 years ago. I don't remember how many came.</p> <p>7 Q But certainly we could check Ms. Melton's</p> <p>8 notes to be sure.</p> <p>9 A If you know where they are, yeah.</p> <p>10 Q And of the employees that came to visit</p> <p>11 you, were any of those employees ones that reported</p> <p>12 to Joyce Bonds?</p> <p>13 A I don't think so.</p> <p>14 Q And do you know if her employees received</p> <p>15 the invitation?</p> <p>16 A No. I understand it was sent to them, but</p> <p>17 I --</p> <p>18 Q But you don't know.</p> <p>19 A I don't know.</p> <p>20 Q Did you walk through the facility while</p> <p>21 you were there?</p> <p>22 A No.</p> <p>23 Q And did you speak to Mr. Aguilar?</p> <p>24 A Yes.</p> <p>25 Q And where did you speak to Mr. Aguilar?</p>	<p>1 had these people. People came and talked to you.</p> <p>2 What else did you do while you were there?</p> <p>3 A I have no idea. Don't remember doing</p> <p>4 anything else. It felt like we were in that</p> <p>5 conference room a long time.</p> <p>6 Q Did you, at any time, try to interview</p> <p>7 Ms. Fisher and get her side of the story?</p> <p>8 A She was not there. She was out on</p> <p>9 bereavement and we knew we would have to get her</p> <p>10 when she got back, we would have to discuss with her</p> <p>11 when she got back.</p> <p>12 Q So you went there knowing she wasn't going</p> <p>13 to be available.</p> <p>14 A Yes. We went there the soonest time we</p> <p>15 had available and did not know she was going to be</p> <p>16 out at that time.</p> <p>17 Q When did you get with Ms. Fisher to</p> <p>18 discuss her side of the story and her concerns?</p> <p>19 A It was sometime shortly after that.</p> <p>20 Q And how did you approach that?</p> <p>21 A I don't remember. I don't remember if she</p> <p>22 called us or we called her, but we did set up a time</p> <p>23 to meet with her and did meet with her to hear her</p> <p>24 side of the story.</p> <p>25 Q And do you recall where you met with</p>

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<p>1 Ms. Fisher?</p> <p>2 A I believe it was at the facility.</p> <p>3 Q Okay. And was Ms. Melton with you again?</p> <p>4 A I don't remember.</p> <p>5 Q And this conversation that you had, I'm</p> <p>6 going to go back just a minute. Ms. Anderson,</p> <p>7 Ms. Darby, Ms. Lauder, and Ms. Moreau that we spoke</p> <p>8 with earlier, they're the ones that wrote the</p> <p>9 e-mails?</p> <p>10 A They're some of them.</p> <p>11 Q Wrote some of the e-mails?</p> <p>12 A (Moving head up and down)</p> <p>13 Q That precipitated the on-site visit?</p> <p>14 A I had also gotten e-mails from</p> <p>15 Mr. Aguilar.</p> <p>16 Q And among Mr. Aguilar, Ms. Anderson,</p> <p>17 Ms. Darby, Ms. Lauder, Ms. Moreau, are any of those</p> <p>18 still working for UTMB?</p> <p>19 A Mr. Aguilar still works for UTMB.</p> <p>20 Q Okay. He does?</p> <p>21 A Uh-huh.</p> <p>22 Q In the TDC facility?</p> <p>23 A Uh-huh. At the Skyview facility.</p> <p>24 Q At the Skyview?</p> <p>25 A At the Skyview facility.</p>	<p>1 A Her side was that she felt like she was</p> <p>2 doing everything she should as a nurse manager, that</p> <p>3 she was making some changes that the staff were</p> <p>4 resisting, and they weren't being as cooperative as</p> <p>5 they could be, that she felt like she was</p> <p>6 approachable. She did agree that her communication</p> <p>7 sometime can be sharp and she would -- she agreed</p> <p>8 that that could happen and she would improve in</p> <p>9 that, improve on that, and that she would</p> <p>10 communicate less with e-mail and more in person and</p> <p>11 that she would communicate more in general with her</p> <p>12 staff.</p> <p>13 Q Anything else?</p> <p>14 A Not that I know of.</p> <p>15 Q Okay. And the specific examples of</p> <p>16 discontent that you shared with her, do you recall</p> <p>17 what those were?</p> <p>18 A Exactly who said what, no, but one of the</p> <p>19 specific examples were that someone got to come and</p> <p>20 go when they wanted in the facility. There was some</p> <p>21 favoritism. They claimed favoritism, that it was</p> <p>22 one of her favorites, and that they would allow her</p> <p>23 to work where she wanted to in the facility when she</p> <p>24 wanted to. One of the other examples was she had</p> <p>25 moved some equipment in the emergency room and had</p>
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<p>1 Q But Ms. Anderson, Darby, Lauder, and</p> <p>2 Moreau are no longer there.</p> <p>3 A I don't know about Ms. Moreau. I know the</p> <p>4 others are not.</p> <p>5 Q And, in fact, the others complained about</p> <p>6 their subsequent managers to you; didn't they?</p> <p>7 A Subsequent manager?</p> <p>8 Q After they no longer reported to</p> <p>9 Ms. Fisher, they didn't like the next one that came</p> <p>10 along either; did they?</p> <p>11 A I don't -- I have not had reason to</p> <p>12 believe that, that -- Ms. Upshaw may. The person</p> <p>13 that's their direct supervisor may. And I know they</p> <p>14 went through some disciplinaries with Ms. Upshaw.</p> <p>15 Q When you had the meeting with Ms. Fisher</p> <p>16 on -- how did that go? Describe that.</p> <p>17 A I felt like I gave her a fair</p> <p>18 summarization of what I had been -- what I had heard</p> <p>19 from the employees. I tried to give some specific</p> <p>20 examples included in that instead of just general</p> <p>21 summarization. And I listened to her side, let her</p> <p>22 tell me what she thought was correct and incorrect</p> <p>23 and why, and then I told her that we'd be putting</p> <p>24 together a plan for both her and the staff.</p> <p>25 Q What was her side?</p>	<p>1 failed to communicate well with -- or the perception</p> <p>2 from the ER nurses were that she failed to</p> <p>3 communicate well with them the changes that were</p> <p>4 made and where they were. I saw that as an at-risk</p> <p>5 opportunity for ER nurses to not feel like they knew</p> <p>6 where equipment was in the emergency room. So that</p> <p>7 was a specific example that I gave her, as well.</p> <p>8 Q Okay. Anything else?</p> <p>9 A No. Not that I remember.</p> <p>10 Q And was this meeting just you and</p> <p>11 Ms. Fisher --</p> <p>12 A I believe so.</p> <p>13 Q -- or was anybody else present?</p> <p>14 A I believe so. If anybody else was there,</p> <p>15 it was Ms. Melton, but I don't remember.</p> <p>16 Q And you indicated you had developed a --</p> <p>17 you said you developed a plan for Ms. Fisher and her</p> <p>18 staff?</p> <p>19 A Yes.</p> <p>20 Q And would -- that plan was in writing?</p> <p>21 A Yes.</p> <p>22 Q And you developed that personally?</p> <p>23 A With the help of Ms. Melton.</p> <p>24 Q Okay. And did Mr. Watson have any input</p> <p>25 in that?</p>

<p style="text-align: right;">45</p> <p>1 A No.</p> <p>2 Q And how was that communicated?</p> <p>3 A I met with Ms. Fisher and the staff</p> <p>4 members.</p> <p>5 Q And do you recall when that was?</p> <p>6 A No.</p> <p>7 Q Are these called expectations? Is that --</p> <p>8 A That's what I call them.</p> <p>9 Q Is that what you call them?</p> <p>10 A That's what I call them.</p> <p>11 Q And when you receive an expectation, is</p> <p>12 that -- that's a need for improvement; isn't it?</p> <p>13 A Sure.</p> <p>14 Q Okay. In other words, saying a need for</p> <p>15 improvement, essentially, "Here's some</p> <p>16 expectations," and the implication is "You're not</p> <p>17 meeting them"?</p> <p>18 A Or that you could improve.</p> <p>19 Q Or you could improve. Okay. All right.</p> <p>20 So essentially that was -- it was a reprimand?</p> <p>21 A No.</p> <p>22 Q Okay. It would be a coaching in -- in the</p> <p>23 free world, they call it coaching?</p> <p>24 A You might consider it a coaching, yes.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">47</p> <p>1 Q Okay. So it is possible to overlap that?</p> <p>2 A Yes.</p> <p>3 Q All right. And you communicated to</p> <p>4 Ms. Fisher, as well as her staff, the expectations</p> <p>5 you had for her. Is that correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. Have you ever done that to another</p> <p>8 staff member where you've communicated their</p> <p>9 expectations to their subordinates?</p> <p>10 A Yes.</p> <p>11 Q And on what occasion have you done that?</p> <p>12 A I've done that in the Gatesville district,</p> <p>13 as well.</p> <p>14 Q And when was that, that you did that?</p> <p>15 A I do not remember when. That's not an</p> <p>16 unusual way to approach a problem when there's</p> <p>17 issues between two sets of people.</p> <p>18 Q Okay. But is the Gatesville the only</p> <p>19 other incident you can recall that you did that?</p> <p>20 A On that large of a scale. Very often I</p> <p>21 have put together two groups of people, sometimes</p> <p>22 from two facilities, where they were having trouble</p> <p>23 with continuity of care or something between two</p> <p>24 facilities and we meet with the two groups and the</p> <p>25 expectations of one and the expectations of the</p>
<p style="text-align: right;">46</p> <p>1 A It was...</p> <p>2 Q And how did -- you said you communicated</p> <p>3 this to Ms. Fisher and her staff, and that was a</p> <p>4 group meeting?</p> <p>5 A Yes.</p> <p>6 Q How was that -- did that meeting come</p> <p>7 about?</p> <p>8 A I planned it and they came. What do you</p> <p>9 mean, how did it come about?</p> <p>10 Q How were they noticed?</p> <p>11 A I e-mailed them, I do believe. I don't</p> <p>12 remember.</p> <p>13 Q The entire staff?</p> <p>14 A Yeah.</p> <p>15 Q All 42 people. How many people showed up?</p> <p>16 A I don't remember.</p> <p>17 Q What did their -- would you have had a log</p> <p>18 of that particular meeting, employee log, to show</p> <p>19 who attended?</p> <p>20 A I don't think so.</p> <p>21 Q Okay. And did you have two different</p> <p>22 staffs -- staff meetings to cover the different</p> <p>23 shifts like you did --</p> <p>24 A Yeah. Well, and I had it -- I had it at a</p> <p>25 time where both could come.</p>	<p style="text-align: right;">48</p> <p>1 others.</p> <p>2 Q Okay.</p> <p>3 A That's not an unusual management tool to</p> <p>4 use.</p> <p>5 Q But in that particular instance, there</p> <p>6 were not superior supervisor and subordinate</p> <p>7 relationship. That would have been an equal</p> <p>8 relationship. Right?</p> <p>9 A In that particular one.</p> <p>10 Q Okay.</p> <p>11 A There are others that were not that also</p> <p>12 had supervisors.</p> <p>13 Q And can you think of any other examples</p> <p>14 for me?</p> <p>15 A The Gatesville example.</p> <p>16 Q Okay. And besides the Gatesville example?</p> <p>17 A No.</p> <p>18 Q Okay. So you communicated your</p> <p>19 expectations of Ms. Fisher to her staff. What were</p> <p>20 those expectations?</p> <p>21 A Pretty much what I've already just</p> <p>22 answer -- what I just told you I told Jackie her --</p> <p>23 the issues were. To e-mail less, she would be</p> <p>24 communicating more directly, that she would be</p> <p>25 having staff meetings on a regular basis to</p>

<p style="text-align: right;">49</p> <p>1 communicate with them. If things were going to be 2 moved, that I expected her to get input from them, 3 so would they please be cooperative in giving her 4 input for things -- for changes that she made of 5 that nature. It was the things I said earlier. 6 Q And you don't consider that a public 7 reprimand? 8 A No. 9 Q What did you convey to the employees that 10 they needed to do, their expectations? I'm sorry. 11 A Their expectations were that they had a 12 new nurse manager that was going to be doing things 13 differently, and I expected that they be cooperative 14 with her, that they work with her to develop those 15 plans, as requested, that they be flexible in their 16 scheduling and where they were told to work. They 17 were being quite inflexible and they weren't wanting 18 to go to the different areas and cross-train, and 19 that was one of our goals. So I told them that they 20 needed to be more flexible with their scheduling, to 21 follow their chain of command, that when they had 22 issues, they needed to come to Jackie. That's all I 23 remember. 24 Q Okay. And Ms. Fisher's were written down. 25 Were the employees' expectations also written down?</p>	<p style="text-align: right;">51</p> <p>1 Q Okay. Well, that wasn't my question. I'm 2 going to go back here a minute. You had 3 expectations for Ms. Fisher, you had expectations 4 for the employees, and did both of them have a 5 90-day review -- 6 A Um-hmm. 7 Q -- tagged to it? 8 A Um-hmm. 9 Q And how did you review Ms. Fisher in 90 10 days? 11 A I didn't. She was not at the Estelle Unit 12 anymore in 90 days. 13 Q So what happened in the interim? 14 A She was given her -- it was decided that 15 the situation was very polarized and that there was 16 no way of retrieval at that particular facility and 17 the decision was made to demote Ms. Fisher. 18 Q Okay. So just so I'm clear on the 19 sequence of events, she was given a 90-day 20 expectations but, yet, she was demoted before she 21 was allowed to complete that 90-day expectations. 22 A Yes. 23 Q And what about the employees that were 24 given expectations? How did you follow up with 25 them? Just let that dissolve?</p>
<p style="text-align: right;">50</p> <p>1 A Yes. 2 Q And each one received a copy of that, was 3 distributed a copy of that? 4 A I believe so. I believe I had copies that 5 day. 6 Q Do you think so or you don't know -- 7 A I don't know. 8 Q -- for sure? 9 A I don't know for sure. 10 Q Okay. 11 A I sat down with the group and had a long 12 discussion and told them both. 13 Q Okay. What about the ones that might not 14 have been at the meeting? 15 A Then I didn't talk to them. 16 Q Okay. And how were they communicated 17 their expectations? 18 A I have no idea. 19 Q And was there any kind of a follow-up that 20 was requested? 21 A There was going to be follow -- the plan 22 was to follow it in 90 days. 23 Q And what happened in 90 days? 24 A By that time, other things had already 25 happened.</p>	<p style="text-align: right;">52</p> <p>1 A I did. 2 Q Okay. Of the 42 employees that reported 3 to Ms. Fisher, how many of them were African 4 American/black? 5 A I have no idea. 6 Q You keep that information somewhere, 7 though; don't you? 8 A HR keeps that information. I don't at 9 all. 10 Q But it is available. 11 A I would guess so. I don't keep it. 12 Q But when you looked at the cross-section 13 of employees that sat there during your meeting 14 where Ms. Fisher was given her expectations and the 15 employees were, lot, a few, not very many, half, a 16 third? 17 A Have no idea. Don't even remember who 18 came. I remember what I told them but I don't 19 remember who was there. 20 Q So we still don't know that all employees 21 got those expectations. 22 A No. All employees didn't have any kind of 23 complaint and many didn't come and weren't 24 interested. 25 Q Okay. But even if they didn't complain,</p>

<p style="text-align: right;">53</p> <p>1 they were still invited.</p> <p>2 A Yes.</p> <p>3 Q Okay. I think we talked about turnover</p> <p>4 rates but I think there were also vacancy rates that</p> <p>5 were discussed. What are vacancy rates?</p> <p>6 A Vacancy rate is how many vacancies you</p> <p>7 have in comparison to how many appointed positions</p> <p>8 you have, how many filled and how many vacant</p> <p>9 positions you have.</p> <p>10 Q And turnover has always been a problem at</p> <p>11 UTMB/TDCJ; hasn't it been?</p> <p>12 A I don't know.</p> <p>13 Q Since you've been there, since you've been</p> <p>14 the director of nursing.</p> <p>15 A It is something we've focused on, yes.</p> <p>16 Q Okay.</p> <p>17 A Made much improvement.</p> <p>18 Q Okay. And is it fixed?</p> <p>19 A Turnover will never be fixed.</p> <p>20 Q Okay.</p> <p>21 A It's not fixed nationwide.</p> <p>22 Q So it's an ongoing problem.</p> <p>23 A (Moving head up and down)</p> <p>24 Q All right. How about vacancy rates?</p> <p>25 A Vacancy rate is also an issue.</p>	<p style="text-align: right;">55</p> <p>1 A No.</p> <p>2 Q Did she have any expectations as a result</p> <p>3 of this on-site visit?</p> <p>4 A No.</p> <p>5 Q All right. Then you said that there was</p> <p>6 no need for the 90-day review because Ms. Fisher was</p> <p>7 demoted. Tell me how that happened. Here you've</p> <p>8 given an employee a 90-day window to improve. Had</p> <p>9 she ever had expectations given her before, if you</p> <p>10 know?</p> <p>11 A I don't know.</p> <p>12 Q Okay. But these were from you. Correct?</p> <p>13 A Yes.</p> <p>14 Q All right. So you gave her 90 days to</p> <p>15 improve but, yet, in the interim, things, you</p> <p>16 indicated, changed or you made a different decision</p> <p>17 and went another direction. Tell me what happened.</p> <p>18 A There was some urgency at Estelle because</p> <p>19 of the staffing, the numbers of vacancies, the</p> <p>20 numbers of people that were leaving, and the numbers</p> <p>21 of people that were complaining. Because it is an</p> <p>22 acute care regional medical facility, there's some</p> <p>23 urgency to the flow of that facility because it is</p> <p>24 also a transient facility where lots of people come</p> <p>25 and stay, going to and from different facilities.</p>
<p style="text-align: right;">54</p> <p>1 Q Okay. And you told me that you monitored</p> <p>2 the turnover rate on a monthly basis?</p> <p>3 A Um-hmm.</p> <p>4 Q How about vacancy rates? How did you --</p> <p>5 did you do the same thing for that?</p> <p>6 A Yes.</p> <p>7 Q And there is a report printed on that?</p> <p>8 A Yes.</p> <p>9 Q And so you could compare the vacancy rates</p> <p>10 of the different facilities?</p> <p>11 A Yes.</p> <p>12 Q So you would have a historical picture</p> <p>13 when you made comments like higher turnover rates or</p> <p>14 higher vacancy rates than other facilities. You</p> <p>15 would be able to back that up with statistics. Is</p> <p>16 that correct?</p> <p>17 A I don't know how long those records are</p> <p>18 kept.</p> <p>19 Q Well, at the time, you would have been</p> <p>20 able to.</p> <p>21 A Yes.</p> <p>22 Q Okay. So did you meet with Joyce Bond as</p> <p>23 you did with Ms. Fisher?</p> <p>24 A No.</p> <p>25 Q After the investigation on site?</p>	<p style="text-align: right;">56</p> <p>1 And the urgency became very evident that we were</p> <p>2 having much difficulty staffing and it was beginning</p> <p>3 to affect patient care.</p> <p>4 Q Okay. And when you say it became evident,</p> <p>5 did you do more investigation or this was slopover</p> <p>6 from the first investigation?</p> <p>7 A We didn't do a separate investigation.</p> <p>8 Q What other facts did you learn after you</p> <p>9 gave her a 90-day improvement plan that caused you</p> <p>10 to make a decision to not permit her to improve</p> <p>11 during those 90 days?</p> <p>12 A The human resources department also played</p> <p>13 a big role here. They went back and reviewed notes</p> <p>14 and reviewed some of those interviews and it was</p> <p>15 with their help and with their direction that I</p> <p>16 planned the demotion.</p> <p>17 Q Okay. So just so I'm clear on what you</p> <p>18 just indicated, the HR -- HR went back and pulled</p> <p>19 the -- started reviewing the information that had</p> <p>20 already been acted on. Is that correct?</p> <p>21 A They relooked at the interviews.</p> <p>22 Q They relooked at the information that</p> <p>23 you'd already spelled out her expectations for.</p> <p>24 A (Moving head up and down)</p> <p>25 Q Okay. So did an investigation -- I'm just</p>

<p style="text-align: right;">57</p> <p>1 trying to understand the sequence here. You did an 2 investigation, you came to a conclusion, gave her 3 some expectations, you gave her 90 days to improve, 4 and then you went back behind that 90-day 5 improvement expectations and said, "Oh, no. We're 6 going to do it worse." Right? "We're essentially 7 not going to give her a chance to improve. We're 8 going to demote her." Is that what happened? 9 Strike that. Let me ask another. 10 What other facts that you learned 11 that you didn't know when the expectations were 12 given? 13 A I just told you, the urgency. Estelle was 14 failing. 15 Q Okay. 16 A Estelle was not -- 17 Q That's a concept but those aren't facts. 18 What facts showed you the urgency that Estelle was 19 failing? 20 A The number of complaints continued. The 21 number of people that planned to leave, the number 22 of staffing vacancies that were remaining uncovered, 23 making it dangerous for the patients, caused the 24 urgency. 25 Q Okay. So the number of complaints. These</p>	<p style="text-align: right;">59</p> <p>1 A No. 2 Q -- of the several? 3 A No. 4 Q Okay. And did they tell you that in 5 person or -- 6 A It wasn't always just to me. Some of it 7 was to human resources, to Ms. Melton. 8 Q Okay. And the continued complaints, who 9 did those come from? 10 A Various employees, and they were, again, 11 to Ms. Melton, as well as myself. 12 Q Okay. But you -- do you recall any of the 13 names? 14 A No. 15 Q And then the vacancy rates, that's a 16 matter of historical data. Right? 17 A It's -- okay. 18 Q Well, I'm asking you. 19 A It's an ever-changing number. 20 Q Okay. 21 A Okay. 22 Q But historically you can look at the 23 vacancy rates and see if the Estelle Unit indeed was 24 worse than the other units. 25 A Yes.</p>
<p style="text-align: right;">58</p> <p>1 were new complaints that you received -- 2 A That continued, yes. 3 Q -- after -- okay. So -- but they were -- 4 you received new ones after you gave her the 90-day 5 expectation. 6 A Nothing seemed to settle. 7 Q Well, that wasn't my question. 8 A Yes. 9 Q Okay. You received complaints that you 10 hadn't acted on previously. 11 A There were continued complaints, yes. 12 Q Okay. And people were planning to leave. 13 What? Are people calling you up, saying, "I'm going 14 to -- I'm going to quit if you don't fire her"? 15 A That was what the -- they were saying. 16 Q And these are subordinate employees 17 that -- and you're listening to them threaten to 18 leave. Is that correct? 19 A They didn't say -- they did not say that 20 they were going to leave if I didn't fire her. They 21 said they had plans to leave. 22 Q Okay. Who said that? 23 A There were several. I don't remember who 24 all they were. 25 Q Can you think of any --</p>	<p style="text-align: right;">60</p> <p>1 Q Okay. And it's your testimony that the 2 vacancy rates at Estelle continued to be worse than 3 the other units? 4 A No. 5 Q Okay. 6 A That they continued to -- the vacancy rate 7 continued to increase and the turnover continued. I 8 never said it was worse than anywhere else. 9 Q All right. Did any other nurse managers 10 get reprimanded or demoted for vacancy rates or 11 turnovers that were high? 12 A No. Not in -- to my knowledge. Not in my 13 division. 14 Q Okay. After she received this 90-day 15 improvement plan of expectations and you continued 16 to have some concerns, did you review any of those 17 with her? 18 A No. She was out. 19 Q Okay. So she was out on medical leave? 20 A Yes. 21 Q This is when her son had surgery? 22 A Yes. 23 Q All right. How can you improve if you're 24 not even there to do it? 25 A I don't know what you want me to say.</p>

<p style="text-align: right;">61</p> <p>1 Q Well, I'm just questioning. If you gave 2 her 90 days to improve and she wasn't there, how 3 could she have failed? 4 A She's still responsible for the facility. 5 I mean, her -- she is the nurse manager of the 6 facility and has assistant nurse managers that she 7 works through to make sure the facility continues 8 to -- 9 Q Okay. So even though she was out on 10 medical leave and wasn't in the facility to work on 11 her 90-day improvement, she was still demoted, based 12 on the continuing concerns you had. 13 A Yes. 14 MS. MILLER: Okay. Can we take a 15 little break? It's 11:30. 16 MR. LIVELY: Sure. 17 (Lunch recess from 11:26 to 12:34) 18 Q (BY MS. MILLER) Back on the record. So, 19 Ms. Gotcher, over the lunch hour, did you have a 20 chance to reflect back on your testimony this 21 morning? 22 A Yes. 23 Q And is there anything you'd like to 24 correct or change that you -- that -- 25 A No.</p>	<p style="text-align: right;">63</p> <p>1 Q Okay. And you've had a chance to review 2 what's been marked as Exhibit Number 1 and I'm going 3 to -- as I represented to you, this is Mr. Batista's 4 representation of what you told him. Is there 5 anything that's not correct in here that you'd like 6 to correct? 7 MR. LIVELY: I'm going to object to 8 this and the fact that it's unauthenticated, 9 unsigned, and undated, but I'll just ask that 10 objection for this running question, but you can go 11 ahead. 12 MS. MILLER: Sure. 13 THE WITNESS: Who's Mr. Batista? 14 Q (BY MS. MILLER) He's the EEOC 15 investigator. Is there -- well, looking at this, is 16 there anything you want to change today that isn't 17 right about what you -- what is represented here? 18 A Well, I certainly don't remember to this 19 level of detail because this was apparently done a 20 number of years ago, but I don't think I ever said 21 anything about -- on the last paragraph on the first 22 page that talks about (as read) "She thought the 23 offense was serious to be warranted more than a 24 simple verbal warning. She went on to say there is 25 nothing in her file other than a write-up, which was</p>
<p style="text-align: right;">62</p> <p>1 (Exhibit 1 marked) 2 Q (BY MS. MILLER) Okay. Thanks. I'm going 3 to show you what's -- maybe. What's been marked as 4 Exhibit Number 1. 5 MS. MILLER: And I only have one set. 6 I'm sorry, guys. 7 Q (BY MS. MILLER) And give you a chance to 8 read that and I'm going to represent to you that 9 this came out the EEOC investigation and is a recap 10 from the EEOC investigator of his interview with 11 you, and I want to make sure that you're a hundred 12 percent comfortable with what he thought you were 13 saying about this case. So if -- read it carefully 14 and if there are any -- is anything you need to 15 correct or change as to what you told the 16 investigator that he didn't quite get right, I'd 17 like to have that corrected at this point. 18 A I don't know that I've seen this document. 19 MR. LIVELY: Go ahead and read it. 20 THE WITNESS: And -- 21 Q (BY MS. MILLER) Yeah, you probably 22 haven't seen it unless you reviewed all of the 23 things we disclosed, or it might have even come from 24 your EEOC files. 25 A I've finished the document.</p>	<p style="text-align: right;">64</p> <p>1 simply meant to get her attention." I don't 2 remember saying that. I don't know -- 3 Q Are you on page 200691 now -- 4 A Yes. 5 Q -- at the bottom of the page? Okay. 6 A I don't -- I don't remember the dates, but 7 if those were the dates that I told him, that's -- 8 and like I said, some of the details I don't 9 remember. 10 Q Okay. Can you -- help me out here. 11 Specifically -- because I'm not trying to put words 12 in your mouth and I just -- if you can't verify it, 13 that's fine. 14 A Well, I don't -- I don't know that I -- 15 "Ms. Gotcher said she told" -- "was told by the 16 employees that Ms. Fisher did things along racial 17 lines or that there were security issues with the 18 way she approached the job." I don't remember that 19 piece. The equipment change piece I talked to you 20 about earlier. 21 Q Yes. Independently, were there racial 22 complaints made about Ms. Fisher, if you recall? 23 A I don't recall. 24 Q Okay. 25 A And so it's some of those kind of details.</p>

<p style="text-align: right;">65</p> <p>1 Q All right. Keep going. You're fine. 2 That's exactly what I need you to do, other things 3 that you can't verify or are not able to verify 4 today. 5 A I don't remember anything about Reagan and 6 Brantley, Ms. Reagan and Brantley. I had said 7 something to you earlier about Ms. Darby, 8 Ms. Lauder, and Ms. Anderson, but I don't remember 9 Reagan or Brantley. 10 Q Okay. And you're still on page 691 of 11 Exhibit 1. 12 A Yes. And when it says, "Ms. Gotcher gave 13 Ms. Fisher a letter of expectations," it makes it 14 sound like it was a separate letter. It was the 15 summarization of the -- of the report that -- and I 16 don't know that Ms. Fisher disagreed with it at that 17 time. 18 Q Okay. You don't recall that. 19 A Hmm-um. 20 Q But there was a time she did disagree with 21 the expectations? 22 A I don't know that she thought they were -- 23 I don't know. 24 Q Okay. 25 A I don't --</p>	<p style="text-align: right;">67</p> <p>1 don't know where that came from but I think there is 2 something in -- or was something in some of the 3 notes that was -- one of the employees said 4 something but I don't -- okay. 5 Q All right. Thank you. Now, at some 6 point, there was a peer review set up for 7 Ms. Fisher. Are you aware of that? 8 A Yes. 9 Q Tell me, just in general, what is a peer 10 review? 11 A The Board of Nursing requires that you 12 have a peer review committee that delineate the 13 rules and regulations, the proceedings, the makeup 14 of the peer review committee, how many RNs and LVNs 15 there will be on the committee, and we have a 16 nursing peer review committee. The board also 17 regulates that anyone can refer to the peer review 18 committee and it is the peer review committee's job 19 to decide whether an incident that's turned in to 20 them is a minor incident under their specified rules 21 or whether it is a major incident that needs to be 22 reported further to the board. 23 Q Okay. How are the members for a peer 24 review committee selected? 25 A They're selected by the district nurse</p>
<p style="text-align: right;">66</p> <p>1 Q All right. 2 A Not to -- not to me, no. And I don't 3 remember speaking with John Pemberton about the case 4 at all. I talked to Georgia Melton but not John 5 Pemberton. 6 Q And that's page 692 of Exhibit Number 1? 7 Is that the page to which you're referring? 8 A Yes, ma'am. 9 Q Thank you. 10 A I don't remember anything. 11 Q On page 692? 12 A With Dr. Vincent. 13 Q Okay. 14 A I saw some -- I saw him talk with 15 Dr. Vincent, but other than that, I don't remember 16 anything. 17 Q So it wouldn't be your position today that 18 there was some intimation of Ms. Fisher having an 19 inappropriate relationship with Dr. Vincent? 20 A I think there was a report to that in one 21 of the notes that Ms. Melton took, that one of the 22 employees said, but I never said it and I -- we 23 never verified any of those. 24 Q Okay. Okay. 25 A So I don't -- that didn't come from me. I</p>	<p style="text-align: right;">68</p> <p>1 managers, recommendations, and put on a committee 2 for -- I think it's a two-year term that they're put 3 on. I think that's what our rules now say. And 4 it -- they add new members and rotate members as 5 necessary. 6 Q So it would be a staggered, always 7 somebody with experience -- 8 A Always somebody. 9 Q -- as the new ones rotate in? Okay. And 10 the district managers are the ones that select them? 11 A They recommend the selection. 12 Q Okay. 13 A And Mr. Eubank and I approve the final 14 selections. 15 Q Okay. So the peer review would be -- and 16 what would you look for in selecting someone to 17 serve on the peer review committee? 18 A When I -- when they make a recommendation 19 to me, I look at their years of experience with the 20 organization. Of course, we have to look at whether 21 or not they're RN or LVNs because you have to have a 22 certain representation from each group on the 23 committee. And I look at their availability with 24 the unit that they're working. If the unit is 25 really one that has a high vacancy rate and is</p>

<p style="text-align: right;">69</p> <p>1 short-staffed, then we might not choose a nurse from 2 that particular facility because I want them to be 3 available to hear testimony and come to the 4 meetings. 5 Q Okay. So when you select them, do you 6 look at their experience and their reputation in 7 UTMB or -- 8 A They are -- they are not under 9 disciplinary action and have not had, yes. 10 Q You want good employees with good 11 knowledge. 12 A Yes. 13 Q All right. And you think they serve for 14 two years? 15 A I think that's what they serve now. 16 Q And the peer review committee, that would 17 be -- on the nursing peer review, that would be 18 composed of all nurses. Is that correct? 19 A Yes. 20 Q Okay. And I think you said it's governed 21 by the Board of Nursing? 22 A They make the rules. 23 Q They make the rules. So the rules that 24 would be followed -- 25 A They report -- they report to me -- they</p>	<p style="text-align: right;">71</p> <p>1 but normally they hear everything that's referred to 2 them. 3 Q Okay. So your answer is, yes, it is 4 discretionary? 5 A Yes. 6 Q Okay. You said it could come from the 7 morbidity committee? Tell me -- 8 A Yeah. 9 Q -- what that is. 10 A It's a joint mortality and morbidity 11 committee that is a committee that is required 12 through TDCJ. It has members that are from TDCJ, 13 Texas Tech, and UTMB on the committee. We review 14 all deaths on all the -- in all the entities, Texas 15 Tech and UTMB, and we specifically look for -- I am 16 part of that committee. We specifically look for 17 things we could have done better, improved, care 18 could have been improved upon, something that didn't 19 happen to the standard that we had hoped that it 20 would. And they then refer -- they then just accept 21 cases or can refer them to many places. They refer 22 them to nursing peer review, medical peer review. 23 Psychiatric has a whole another way they do theirs 24 but with committee review. And they could even 25 refer it to security for -- if it's a security</p>
<p style="text-align: right;">70</p> <p>1 report to the directors of nurses and they 2 ultimately report to the directors of the 3 organization, is who the peer review reports to. 4 Q Okay. So do you -- how would a peer 5 review come about? 6 A Can come about many different ways. 7 Anyone can refer -- the board says that anyone can 8 refer an instance or a case or a nurse to the peer 9 review committee. 10 Q Okay. 11 A And they come about various ways in our 12 system. They come through TDCJ when they've 13 investigated and find a complaint or from the 14 mortality/morbidity committee that is part of TDCJ. 15 They can come from nurse managers who feel like 16 there's been a serious incident on their -- on their 17 facility. And another -- any other nurse, any 18 nurse, has the capability of requesting a peer 19 review. 20 Q Is it discretionary or must the peer 21 review investigate once there's been a referral 22 made? 23 A The peer review can look at the case and 24 decide whether they're going to hear the case or 25 not, whether it's even a peer review case or not,</p>	<p style="text-align: right;">72</p> <p>1 issue, or a systems problem. 2 Q Okay. When you say they -- are they a 3 referral committee? Is that what happens? 4 A Yes. Yes. They don't -- they don't -- 5 Q And must they refer something? 6 A No. 7 Q Okay. So they're a review committee with 8 referral potential? 9 A Yes. 10 Q But their main mission is not to refer. 11 A Their main mission is to look at the case. 12 Q Is to evaluate. Is that correct? 13 A Yes. 14 Q All right. Now, you know that Ms. Fisher 15 had a referral to peer review during the time that 16 some of the other issues were happening. You're 17 aware of that. 18 A Yes. 19 Q Can you tell me the circumstances under 20 which that was referred to peer review? 21 MR. LIVELY: I think I'm going to 22 object to this. It's getting into privileged matter 23 and instruct the witness not to answer. 24 MS. MILLER: The referral. 25 MR. LIVELY: If you want --</p>

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<p>1 MS. MILLER: The only thing that's 2 objectionable is the actual -- the report. 3 MR. LIVELY: Can you go -- 4 MS. MILLER: Can we go off the record 5 just a minute? 6 MR. LIVELY: Yeah. 7 (Discussion off the record 8 from 12:54 to 12:55) 9 Q (BY MS. MILLER) Now, you're aware that 10 Ms. Fisher was referred -- or her actions were 11 referred to a peer review committee. 12 A Yes. 13 Q And what procedure happened or how did the 14 procedure stages follow that the actual referral was 15 made to the peer review committee? I'm not asking 16 you what was referred. 17 A At that time in the organization when she 18 was -- when that referral was made from mortality/ 19 morbidity, all nursing referrals from mortality and 20 morbidity committee were heard -- that were referred 21 to the nursing peer review committee were heard by 22 nursing peer review. 23 Q Okay. That wasn't my question. Going to 24 the mortality committee, that's standard practice 25 when an inmate passes away or an individual passes</p>	<p>1 not well-versed in all the duties of a utilization 2 review nurse, so they requested an ad hoc committee 3 member to provide them with the knowledge and 4 specific knowledge about that particular -- the 5 particular processes that go on there. 6 Q Okay. And in all cases, that ad hoc 7 member would be a nurse, though. Is that correct? 8 A Not always. 9 Q So the peer review can have a committee 10 member that's not a nurse? 11 A Not a committee member. It can have an 12 ad hoc information kind of person. We can have a 13 pharmacist to help us. We could have a respiratory 14 therapist come and give information to the 15 committee. You can have others that there -- 16 Q So that would be a -- I'm sorry. 17 A So you could have others. There are -- 18 there's a chair person for the committee that is a 19 registered nurse that is a voting member of the 20 committee and then there's usually some sort of 21 facilitator that is there -- not a voting member, 22 that is there to help facilitate gathering of 23 information, copying of paperwork, making sure the 24 stuff gets done, the flow of medical records to the 25 committee members, that they need to see. It's a</p>
74	76
<p>1 away under the care of UTMB. Is that correct? 2 A Or Texas Tech? 3 Q Or Texas Tech. Correct? 4 A Yes. 5 Q All right. So is it -- in Ms. Fisher's 6 case, was her case referred by the mortality 7 committee to the peer review? 8 A Yes. 9 Q And was then the option of whether or not 10 to review it became a peer review option, to accept 11 it or not? 12 A Yes. 13 Q Okay. And in the peer review process, who 14 is permitted to be in the peer review meetings? 15 A There's no rules and regulations about who 16 can be in the room. There are rules and regulations 17 about who serves on the committee as a -- as a 18 committee member and who's -- who can vote in the 19 decision. The peer review committee often has 20 people in the room that can provide knowledge to the 21 peer review committee, members that need additional 22 knowledge. Ad hoc members are allowed in the peer 23 review committee for -- as an example, a utilization 24 review nurse was referred to the peer review 25 committee and the nurses in -- on the committee were</p>	<p>1 person that just facilitates the setup of getting 2 what the committee members need. They -- 3 Q But they're not a committee member. 4 A But they're not a committee member. 5 Q Okay. Who was the facilitator in 6 Ms. Fisher's case? 7 A At that time, it was David Watson. 8 Q Was he an ad hoc member also? 9 A No. He was a -- he was just a 10 facilitator. 11 Q And the facilitator, is that -- is that 12 outlined in the Board of Nursing regulations that 13 that's permitted? 14 A It's not said that it's denied. 15 Q Well, that wasn't my question. Is it 16 outlined that it's permitted? 17 A Not specifically. 18 Q Okay. And let's go back to the mortality 19 committee. Their referral does not go directly to 20 the peer review committee; does it? 21 A It doesn't now. It did at that time. 22 Q Well, isn't it true that the referral went 23 to you and you're the one that made the decision to 24 send Ms. Fisher's case to the peer review committee? 25 A No.</p>

<p style="text-align: right;">77</p> <p>1 Q That's not correct?</p> <p>2 A No. They do send them all to me. They</p> <p>3 copy me, but they all -- at that time, all of them</p> <p>4 went to the peer review committee for mortality</p> <p>5 review.</p> <p>6 Q And was that a standard procedure</p> <p>7 somewhere?</p> <p>8 A It was because the paper -- the referral</p> <p>9 says that it is a referral. The paper from the</p> <p>10 mortality and morbidity committee says that it is a</p> <p>11 referral to the -- they want it to be referred to</p> <p>12 the nursing peer review committee. The language on</p> <p>13 most forms has since changed, at my request. I</p> <p>14 can't tell you exactly when it happened, but I</p> <p>15 requested that the mortality and morbidity committee</p> <p>16 reword that to ask for it to be reviewed,</p> <p>17 administratively reviewed, for possible referral to</p> <p>18 the peer review committee.</p> <p>19 Q And you don't know when that changed?</p> <p>20 A I don't know when that changed.</p> <p>21 Q Okay.</p> <p>22 A But it was not at that time. At that</p> <p>23 time, they were still all going.</p> <p>24 Q And where could we find that information</p> <p>25 if we needed to verify that?</p>	<p style="text-align: right;">79</p> <p>1 indicate to her that what she did or how she</p> <p>2 conducted herself during and after that incident was</p> <p>3 inappropriate or not according to guidelines?</p> <p>4 MR. LIVELY: I'm a little --</p> <p>5 MS. MILLER: Did you -- did I lose</p> <p>6 you?</p> <p>7 THE WITNESS: I don't know that I</p> <p>8 understand what you're asking.</p> <p>9 MS. MILLER: Okay.</p> <p>10 MR. LIVELY: Yeah. I didn't hear.</p> <p>11 Are you talking about from a peer meeting or --</p> <p>12 MS. MILLER: No. I'm saying</p> <p>13 immediately upon it happening.</p> <p>14 MR. LIVELY: Okay. From the UTMB,</p> <p>15 Ms. Gotcher --</p> <p>16 Q (BY MS. MILLER) From the day of the</p> <p>17 suicide that Ms. Fisher was involved in, treating</p> <p>18 this patient, what, if anything, was done to provide</p> <p>19 her with expectations, consult with her about how</p> <p>20 she might have handled things differently, review</p> <p>21 her -- how she -- her conduct? What was done during</p> <p>22 the time frame immediately after the incident?</p> <p>23 A At that time, Mr. Watson was responsible</p> <p>24 for upholding the standard of performance and</p> <p>25 practice on the facilities. I don't think he</p>
<p style="text-align: right;">78</p> <p>1 A I have no idea. Mr. -- Dr. Kelly is over</p> <p>2 the -- and I don't know when I requested that</p> <p>3 change. We did it because of the numbers of cases</p> <p>4 and some of the small cases that were going to peer</p> <p>5 review. Now, peer review always had the capability</p> <p>6 to -- once a case was referred to them, to say that</p> <p>7 it was not -- it didn't meet their criteria for</p> <p>8 referral.</p> <p>9 Q On how many other cases was Mr. Watson the</p> <p>10 facilitator for?</p> <p>11 A Many. He was the facilitator for the peer</p> <p>12 review committee for several years. I did it for</p> <p>13 several years before I became the director and he's</p> <p>14 done it for several -- he did it for several years</p> <p>15 and then it moved to Justin Robison, who was the</p> <p>16 district nurse manager for the San Antonio district,</p> <p>17 and he's done it for several years.</p> <p>18 Q And when did it change to him?</p> <p>19 A When Mr. Watson left, I had to find a new</p> <p>20 facilitator.</p> <p>21 Q Okay. Now, at the time that this</p> <p>22 happened, at the time that the incident happened</p> <p>23 that was the subject of Ms. Fisher's peer review,</p> <p>24 was there anything addressed directly toward her,</p> <p>25 any kind of expectations, anything that would</p>	<p style="text-align: right;">80</p> <p>1 thought at any point in time that that was -- there</p> <p>2 was any disciplinary need or any remediation that</p> <p>3 needed to be done with that incident. Deaths are</p> <p>4 reviewed, so I know that the death was reviewed and</p> <p>5 at that time he didn't find -- he found no nursing</p> <p>6 issues that needed to be reviewed.</p> <p>7 Q Okay. And how about yourself?</p> <p>8 A I didn't review it.</p> <p>9 Q Okay. And --</p> <p>10 A I knew there was a death and he told me</p> <p>11 there were no nursing issues. That's what's</p> <p>12 reported to me at my level.</p> <p>13 (Exhibit 2 marked)</p> <p>14 Q (BY MS. MILLER) Okay. I'm going to show</p> <p>15 you what's been marked as Exhibit Number 2, and take</p> <p>16 a minute and look at that document, if you would.</p> <p>17 A This one looks like it's been marked on.</p> <p>18 THE WITNESS: See?</p> <p>19 MR. LIVELY: Yeah, I noticed that</p> <p>20 too.</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. LIVELY: We'll clean that up if</p> <p>23 we have to use it as an exhibit unless somebody --</p> <p>24 we wrote on it. Do you see that report's</p> <p>25 underlined?</p>

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<p>1 MS. MILLER: I do, and I can't tell 2 you where it came from. I didn't do it. 3 MR. LIVELY: I didn't -- 4 MS. MILLER: It was on the document 5 when we I got it. 6 MS. FISHER: I think I underlined 7 that before I gave maybe copies because as I was 8 doing my appeals -- those was things that I had at 9 home, and as I was doing my appeals -- 10 MS. MILLER: All right. So we can 11 clean it up. 12 MR. LIVELY: So all that must be -- 13 yeah. 14 MS. FISHER: But HR has them all, 15 actually. 16 MR. LIVELY: We -- that's no big 17 deal. 18 MS. MILLER: I just pulled the wrong 19 one from the file, then. 20 MR. LIVELY: We can clean it up. 21 MS. MILLER: Okay. 22 Q (BY MS. MILLER) Absent the underlining, 23 do you recognize this document? 24 A It -- yes. It's a standard evaluation 25 form.</p>	<p>1 A Yes. 2 Q Correct? And Mr. Watson signed off on it. 3 Correct? 4 A Yes. 5 Q And is that your signature also? 6 A Yes, it is. 7 Q Okay. And you signed off on this 8 particular Exhibit Number 2 on July 15th of '05. 9 Right? 10 A (Moving head up and down) Sure. 11 Q Okay. And this review was after the 12 incident with the individual that hung himself that 13 was -- became the subject of Ms. Fisher's peer 14 review. Is that correct? 15 A Okay. I don't know. 16 Q Okay. Well, if it were done afterward, 17 would not this be an appropriate place -- if she 18 didn't follow protocol and needed some sort of 19 reprimand, wouldn't this be an appropriate place in 20 which to identify that for her? 21 A If, at the time, Mr. Watson thought that 22 there were performance issues, this would have been 23 the place to put them. 24 Q Okay. And you signed off on it, too, so 25 that means you had an opportunity to identify</p>
82	84
<p>1 Q And it's for Jackie Fisher. Right? 2 A Yes. 3 Q And what does this PMP date mean? 4 A That's the day the performance measure is 5 performed. 6 Q Okay. And then that's 6/25/04. Then why 7 wasn't it given until -- if you look on page 82 of 8 Exhibit Number 2, wasn't signed off on until July of 9 '05? 10 A It must mean that Mr. Watson was late 11 giving her her evaluation. 12 Q (BY MS. MILLER) Is that the start date? 13 MS. FISHER: That's the date it was 14 supposed to be -- 15 MS. MILLER: Okay. 16 MS. FISHER: Actually supposed to 17 be -- we put this date when they sign. Maybe he did 18 it that day. 19 MS. MILLER: Okay. 20 Q (BY MS. MILLER) All right. So the PMP 21 date is the date it's supposed to be given? 22 A Yes. 23 Q That it's due. And on page 82, the last 24 page, is the date that the individual employee, 25 Ms. Fisher, signed off on it?</p>	<p>1 performance issues also? 2 A I have much less knowledge about 3 performance issues for individual nurse managers 4 than my nurse -- my directors of nurses do, my 5 district directors do, but if I had knowledge of a 6 performance issue, I would bring it up before my 7 signature, yes. 8 Q Okay. So you -- but you are able to add 9 to these and -- 10 A And change them as I wish. 11 Q -- if you feel a need to comment, you 12 could. 13 A Yes. 14 Q Okay. So you generally have a lot less 15 knowledge than their immediate supervisors about 16 their performance. 17 A Sure. 18 Q Is that fair? Okay. But who made the 19 decision to demote Ms. Fisher? 20 A When? 21 Q How many times was she demoted? 22 A Twice. 23 Q Okay. Well, you have to tell me about the 24 times. 25 A Well, no. She got two letters where she</p>

<p style="text-align: right;">85</p> <p>1 was demoted. If you're speaking of the time -- what 2 time are you speaking of that she was demoted? 3 Q Well, I don't -- I'm confused. You have 4 to tell me. She was demoted twice. Okay. What's 5 the first time she was demoted? 6 A After her -- after the on-site 7 investigation and review and -- of the data. 8 Q And she was demoted -- she was demoted to 9 a Nurse Clinician III? 10 A That was the recommendation that was 11 initially made and was the recommendation from HR. 12 Q Okay. And that wasn't your 13 recommendation. 14 A It was a consideration. I did reconsider 15 and tried to look at the entire -- her entire career 16 with us and I identified where she had been 17 successful as an assistant nurse manager prior, and 18 I made the decision with the help of Mr. Watson -- 19 it was a -- I never make a decision without getting 20 input from someone else. And I did talk to HR, as 21 well, and I made the decision that her last 22 successful performance was as an assistant nurse 23 manager and I would rather demote her to an 24 assistant nurse manager than to staff nurse. 25 MS. MILLER: Move to strike as</p>	<p style="text-align: right;">87</p> <p>1 Q Okay. And what happened with that? 2 A She wrote and told me -- or e-mailed or 3 called or in some way I found out that she had 4 already met the agreed-upon stipulations from the 5 Board of Nursing and that she had already completed 6 those and that they had already -- she thought they 7 had already cleared her of all requirements. 8 Q Um-hmm. Um-hmm. 9 A So I stopped what I was doing. I went and 10 looked on the BON web site on our licensure to see 11 if the restrictions remained. They did not remain. 12 She was correct. They had all been approved by the 13 board and accepted and they had been taken off her 14 license, and I removed my intent to demote her when 15 I found that out. 16 Q So did you jump the gun on that decision 17 to demote her? 18 A No. 19 Q All right. So, what? Did she ever have 20 restrictions? 21 A Yes. 22 Q And how were you notified? 23 A I was notified through the BON through the 24 mail that there were restrictions on her licensure. 25 Q And so that certainly would be a document</p>
<p style="text-align: right;">86</p> <p>1 nonresponsive. 2 Q (BY MS. MILLER) Who made the decision to 3 promote her -- or to demote her? You said there are 4 two times. Who made the decision the first time? 5 A I did. 6 Q Okay. And what -- when was the second 7 time she was demoted? 8 A There was an intent to demote her when she 9 had Board of Nursing regulations -- stipulations and 10 regulations restrictions to her licensure. 11 Q And when was that? 12 A I don't remember the date. 13 Q Okay. And who made that decision? 14 A I did. 15 Q Okay. 16 A That is also common practice throughout 17 all of UTMB that nursing does not allow managers to 18 have stipulations or restrictions on their 19 licensures. 20 Q And that's understandable. Sure. And so 21 you made that decision at that point. 22 A The minute I found out she had -- I was 23 notified through the mail that she had restrictions 24 on her licensure, I went to human resources and 25 recommended her demotion.</p>	<p style="text-align: right;">88</p> <p>1 that would be important in this lawsuit. 2 A Okay. 3 Q And you would keep a record of that; would 4 you not? 5 A I think HR has a record of that. 6 Q Okay. 7 A I don't keep a record of that. 8 Q Okay. 9 A HR would have. 10 Q Do you keep personnel files on any 11 individuals? 12 A The individuals I directly supervise. 13 Q But not anybody else? 14 A Yes. 15 Q Okay. So the first time that the decision 16 was to -- was made to demote her was based on 17 performance. 18 A Yes. 19 Q And so you were the one that made the 20 decision. Yet, I think I just indicated with the 21 review or the evaluation that you rely on the -- 22 their direct supervisors because they're more 23 knowledgeable. Now, I'm getting a conflicting 24 feedback here. Can you explain that dichotomy to 25 me?</p>

<p style="text-align: right;">89</p> <p>1 A Well, I also tried to tell you that I did 2 not make that decision to demote in isolation. I 3 made that decision with the help of Mr. Watson and 4 human resources. That was not made in isolation. 5 Q Was there ever a time that Mr. Watson 6 didn't agree with you? 7 A He was much more supportive of the 8 assistant nurse manager demotion rather than all the 9 way to staff nurse. He and I both were, actually. 10 It was human resources that supported the demotion 11 to staff nurse. 12 Q So back to Exhibit Number 2, had there 13 been any serious concerns about her performance or 14 about the peer review, the findings of the peer 15 review, that could have been noted on her review for 16 that time period. Is that correct? 17 A The Board of Nursing considers nursing 18 peer review and disciplinary to be very separate. 19 Q I just want to interrupt you. I'm sorry. 20 Because if I ask you a "yes" or "no" question, I'm 21 sure your lawyers have told you I'd prefer that you 22 just answer the question and then he'll get a chance 23 to ask you questions later if you want to expound on 24 it. Okay? 25 A Okay.</p>	<p style="text-align: right;">91</p> <p>1 kind of information from the Board of Nursing 2 Examiners. 3 A No. 4 Q Okay. 5 A It's to the person that refers. 6 Q And you -- neither you nor Mr. Watson 7 would have received direct communication from them 8 unless you were the referring person. Is that 9 correct? 10 A Yes. 11 Q Now, while Ms. Fisher's examination before 12 the Board of Nursing Examiners was pending, there 13 was another incident that happened on her watch, so 14 to speak. Are you aware of that? Another 15 mortality? 16 A I don't know what you're talking about. 17 Q Well, you're on the -- you would have 18 reviewed it as being on the board of -- 19 A We review about 60 to 80 cases a month, so 20 I would not have remembered. 21 Q Is it ever -- would it ever happen that an 22 incident would be referred directly to the Board of 23 Nursing Examiners if it hadn't gone through the peer 24 review, the nursing peer review? 25 A Yes.</p>
<p style="text-align: right;">90</p> <p>1 Q We agree on that? You just answer the 2 questions I'll ask you? 3 A Yes. 4 Q Thank you. So you could have -- in this 5 review that you reviewed and signed off on Exhibit 6 Number 2, had there been any overriding concerns 7 about her performance or the conduct that was sent 8 to peer review, that could have been noted in her 9 review itself, which is Exhibit Number 2. Is that 10 correct? 11 A Yes. 12 Q Now, did you get copies of the 13 communication from the Board of Nurse Examiners, or 14 how were you kept informed on what was happening 15 there? Once it was -- once Ms. Fisher's case was 16 sent to the Board of Nurse Examiners, how were you 17 informed as to the progress or the result or any 18 feedback from the board? 19 A The person that refers them to the board 20 normally is the one that gets the correspondence 21 back. So the peer review chairperson would have 22 gotten a letter back from the BON and then forwarded 23 any information to human resources, who would then 24 forward it to me. 25 Q So you wouldn't directly have received any</p>	<p style="text-align: right;">92</p> <p>1 Q And how would that procedure work? 2 A Anyone can report to the Board of Nursing. 3 Their rules require that anyone can fill out a form 4 and report to the Board of Nursing. 5 Q So anyone can report to the peer review. 6 A Yes. 7 Q And anyone can report to the Board of 8 Nursing. 9 A Yes. 10 Q It doesn't necessarily have to be a 11 referral from the morbidity committee or from the 12 peer review committee. 13 A Or from me. 14 Q Or from you or from Mr. Watson. 15 A No. 16 (Exhibit 3 marked) 17 Q (BY MS. MILLER) Hang on just a second. 18 I'm going to mark -- I'll show you what's been 19 marked as Exhibit Number 3, and take a minute and 20 review that document, if you would. 21 MR. LIVELY: While you're reading, 22 I'm going to go -- 23 MS. MILLER: Sure. 24 (Discussion off the record 25 from 1:24 to 1:31)</p>

<p style="text-align: right;">93</p> <p>1 Q (BY MS. MILLER) Okay. You've had a 2 chance to review Exhibit Number 3, Ms. Gotcher? 3 A Yes. 4 Q And it's quite a detailed document; is it 5 not? 6 A Yes, it is. 7 Q And this represents an e-mail, evidently 8 from Mr. Watson to you, Ms. Rader, and Ms. Melton, 9 on Thursday, December 12th, of 2006. 10 A No. January the 12th. 11 Q January. Thank you. January 12th. That 12 was not a trick. I'm being dyslexic to some degree. 13 January 12th of 2006. 14 A Yes. 15 Q All right. And in this document, there 16 are eight pages of details that Mr. Watson has 17 delineated, all specific to Ms. Fisher. 18 A Yes. 19 Q Correct? Prior to January 12th of 2006, 20 had he put any of these issues that he raised in 21 writing to you previously? 22 A Not that I remember, no. 23 Q Okay. And you had all of this information 24 at the time that you made the decision to give her a 25 90-day expectations letter; did you not?</p>	<p style="text-align: right;">95</p> <p>1 employees -- she stated again the moving of the 2 equipment and it continues to be moved -- and her 3 displeasure with Ms. Fisher's management style. 4 Q Okay. I guess I didn't ask the question 5 right. What -- 6 MR. LIVELY: That's what I thought. 7 Q (BY MS. MILLER) What was -- 8 MR. LIVELY: What was her job? 9 Q (BY MS. MILLER) What was her job 10 position? 11 A Oh, what was her position? Well -- 12 Q Well, I know. You were answering my 13 question, so I didn't interrupt you. 14 A Her position was an RN in the emergency 15 room at the RMF. 16 Q Okay. Thank you. And she reported to 17 Ms. Fisher. Is that correct? 18 A Yes. 19 Q Do you recall -- well, tell me: What's 20 the chain of command mean? 21 A The chain of command means that I would 22 prefer that nurses go up their designated assigned 23 chain when there are issues or concerns that they 24 have with their supervisor, that they solve those at 25 the lowest possible level to their immediate</p>
<p style="text-align: right;">94</p> <p>1 A Yes. 2 (Exhibit 4 marked) 3 Q (BY MS. MILLER) Going to show you what's 4 been marked as Exhibit Number 4, and do you 5 recognize this document? 6 A Not offhand. 7 Q Okay. And we'll take a minute and look 8 through it. 9 A Okay. 10 Q You've had a chance to look at Exhibit 11 Number 4? 12 A Yes, ma'am. 13 Q And after taking a minute to read through, 14 does that refresh your memory as far as receiving 15 this document? 16 A I don't remember it but there were lots of 17 documents. 18 Q All right. And this is from an Ann Darby 19 and she's one of the ones you mentioned earlier that 20 had e-mailed you or contacted you about Ms. Fisher. 21 Is that correct? 22 A Yes. 23 Q What was Ms. Darby's position? 24 A Ms. Darby's position was that she didn't 25 feel like Ms. Fisher was being fair with some</p>	<p style="text-align: right;">96</p> <p>1 supervisor. 2 Q And essentially, in this particular 3 instance, this would mean if Ms. Darby had a 4 complaint with Ms. Fisher, she should try to deal 5 with Ms. Fisher first. Is that correct? 6 A (Moving head up and down) 7 Q And what was done in particular with -- as 8 far as Ms. Darby, I believe it was Ms. Anderson, 9 Ms. Lauder, and Ms. Moreau to have them work in the 10 chain of command and try to deal with Ms. Fisher 11 directly? What did you do personally to have -- to 12 facilitate that? 13 A Personally to facilitate that, I don't 14 answer these. I don't -- when I get these, I do not 15 answer them. I let -- if she needs this to be 16 answered, she needs to go to Ms. Fisher with that 17 and so I don't answer these. I don't answer back. 18 Q Okay. So that's the way you respond to 19 the chain of command is that you don't pay any 20 attention to it. 21 A No. That's not the way I respond to the 22 chain of command. 23 Q Okay. 24 A That's the way I responded to Ms. Darby in 25 this e-mail.</p>

<p style="text-align: right;">97</p> <p>1 Q But, yet, you did take some e-mails, such 2 as this one, and obviously give them credence. 3 A When did you hear me say that? 4 Q Well, you were basing some of your 5 decision-making on complaints from the employees; 6 were you not? 7 A It was a combination of all of the 8 information, yes, but -- 9 Q Okay. Some of -- I'm not saying that you 10 relied a hundred percent, but did you rely on 11 complaints from employees in your decision to demote 12 Ms. Fisher? 13 A Yes. 14 Q Okay. And is there anything that you 15 particularly did to reinforce the chain of command? 16 A Yes. I put it in the expectations that I 17 gave them when I met with that group. I verbally 18 told the entire group that I expected them to follow 19 their chain of command. 20 Q Okay. And, yet, when you said that you 21 didn't extend the 90-day period to her, that you 22 made the decision in that interim period to still 23 demote her, I believe you said that was based in 24 part from continuing complaints directly to you. 25 A Not necessarily directly to me. Continued</p>	<p style="text-align: right;">99</p> <p>1 facility. 2 Q And that would have included Ms. Bord. 3 A Ms. Bord? 4 Q Ms. Boyd. 5 MS. FISHER: Bond. 6 Q (BY MS. MILLER) Bond. 7 A No. 8 Q So it was only the facility as it 9 pertained to Ms. Fisher. 10 A The RMF, not even the building, not even 11 Ms. Fisher's other facility or not high security. 12 The particular facility I went to, the RMF. 13 Q Okay. So your investigation was limited 14 to the RMF? 15 A Yeah. 16 Q And her 42 employees, are those all RMF 17 employees? 18 A No. 19 Q Did you -- 20 A But the employees do float from place to 21 place, so there are times when they work the RMF and 22 other times when they work the building. 23 Q Okay. And so your -- the invitation to 24 come and speak with you would have been directed 25 only to the RMF.</p>
<p style="text-align: right;">98</p> <p>1 complaints. 2 Q Okay. Were those complaints in the chain 3 of command as you had expected them to be? 4 A I don't know if they had talked to 5 Ms. Fisher about them or not. I know that they 6 spoke to Mr. Watson about them. 7 Q And how do you know that? 8 A That was his report to me. 9 Q Is that a report in writing to you? 10 A No. 11 Q And that's an oral report. 12 A Yes. 13 Q So we would have no way of verifying that. 14 A No. 15 Q Do you recall, after having time to think 16 about it, what date it was that you went to do the 17 on-site visit? 18 A It's been stated in several of these 19 documents but I didn't. 20 Q You don't recall. 21 A No. 22 Q And just so I'm clear again, did you go to 23 investigate Ms. Fisher or to investigate the 24 facility? 25 A The facility, the atmosphere of the</p>	<p style="text-align: right;">100</p> <p>1 A Would have been directly to anyone that 2 ever worked in the RMF. 3 Q Okay. And that would have been every 4 employee or not? 5 A Yes. 6 Q Now, I think we also talked about your 7 follow-up with Ms. Fisher. Did you recall if you 8 initiated it or if she initiated it? 9 A What follow-up? 10 Q The follow-up after you visited the 11 facility when she wasn't there. 12 A I don't recall. I just know we met. 13 THE WITNESS: Can we take a break? 14 MR. LIVELY: Sure. We can take a 15 little break. 16 MS. MILLER: Yeah. Sure. 17 (Recess from 1:41 to 1:44) 18 (Exhibit 5 marked) 19 Q (BY MS. MILLER) I show you what's been 20 marked as Exhibit Number 5. Take a look at those 21 series of e-mails, if you would, please. Oh. I 22 think that second one doesn't belong with the first 23 one. I'll just give you one page. Sorry. 24 A They're not flowing very well. 25 Q No, they're not flowing at all. Give me</p>

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<p>1 back the second page, please. Thank you. Okay.</p> <p>2 Exhibit Number 5, consisting of one page, do you</p> <p>3 recognize that e-mail?</p> <p>4 A Sure. Yes.</p> <p>5 Q Okay. And this would have been the</p> <p>6 meeting where you had the follow-up meeting with the</p> <p>7 staff and with Ms. Fisher.</p> <p>8 A Yes.</p> <p>9 Q And did you give her the -- you have</p> <p>10 five -- three different meetings?</p> <p>11 A Yes.</p> <p>12 Q To accommodate different times?</p> <p>13 A Yes.</p> <p>14 Q And did you give her her expectations in</p> <p>15 every meeting or just the first meeting?</p> <p>16 A I would have thought I gave them in all.</p> <p>17 I would have expected I gave them in all.</p> <p>18 Q Okay. So even though she had her</p> <p>19 expectations at 10:00 a.m., you would have regiven</p> <p>20 her expectations for the benefit of the employees.</p> <p>21 A Yes.</p> <p>22 Q And was this a reprimand or not?</p> <p>23 A No.</p> <p>24 Q No. Okay. So before you demote someone,</p> <p>25 aren't you supposed to go through some steps of</p>	<p>1 was felt that more aggressive action needed to be</p> <p>2 taken.</p> <p>3 Q And when you say "it was felt," you felt?</p> <p>4 A Not in isolation. HR and Mr. Watson were</p> <p>5 in that decision.</p> <p>6 Q Okay. And I think you named five people,</p> <p>7 Mr. Aguilar, Anderson, Darby, Lauder, and Moreau,</p> <p>8 and you couldn't tell me anybody that came and spoke</p> <p>9 with you that day -- or those two days. Who else</p> <p>10 was complaining?</p> <p>11 A Well, there was a list in Mr. Watson's</p> <p>12 e-mail that you gave me in a different exhibit, and</p> <p>13 I don't remember all of who was complaining. It was</p> <p>14 a large enough number to cause concern.</p> <p>15 Q Okay. And when was it that you got</p> <p>16 Ms. Fisher's side of the -- of this?</p> <p>17 A After the on-site visit, we met with</p> <p>18 Ms. Fisher.</p> <p>19 Q Okay. And so you had -- didn't reprimand</p> <p>20 her.</p> <p>21 A No.</p> <p>22 Q But you did give her expectations. What</p> <p>23 level of progressive discipline are the expectations</p> <p>24 usually described as?</p> <p>25 A This was not a formal written letter of</p>
102	104
<p>1 disciplinary procedures, progressive discipline?</p> <p>2 A I use -- there -- that's not always the</p> <p>3 case and I use HR to help me determine at what level</p> <p>4 disciplinary needs to happen when they -- they keep</p> <p>5 it consistent throughout the entire organization.</p> <p>6 So, no, there are things and times when we do not go</p> <p>7 through each step of the disciplinary process.</p> <p>8 Q Okay. But you do have a progressive</p> <p>9 disciplinary procedure.</p> <p>10 A Yes, we do.</p> <p>11 Q And that would be a step procedure where,</p> <p>12 before a serious tangible employment detrimental</p> <p>13 event would happen, that you would try to go through</p> <p>14 those steps.</p> <p>15 A If it's appropriate.</p> <p>16 Q Okay. And are you saying that performance</p> <p>17 issues would not be appropriate for progressive</p> <p>18 discipline?</p> <p>19 A Not always.</p> <p>20 Q Why would not Mrs. Fisher's issues have</p> <p>21 been appropriate for progressive discipline before</p> <p>22 you demoted her?</p> <p>23 A I -- with the reports we were getting from</p> <p>24 the nursing staff and the urgency of the Estelle</p> <p>25 facility, the importance of the Estelle facility, it</p>	<p>1 expectation. This was a communication that was</p> <p>2 given to her and the staff in hopes of improving the</p> <p>3 communication, morale, and atmosphere at the Estelle</p> <p>4 facility.</p> <p>5 Q All right. And can you give me an example</p> <p>6 of some kind of performance issues that a nurse</p> <p>7 manager might be presented with that you would use</p> <p>8 progressive discipline on? Because this apparently</p> <p>9 wasn't one of them; was it?</p> <p>10 A No. This was not one of them. But if a</p> <p>11 nurse manager has performance issues with time</p> <p>12 lines, getting things done, with -- there's many</p> <p>13 times that we give progressive disciplinary action.</p> <p>14 Q But not this time.</p> <p>15 A No.</p> <p>16 Q Who was the nurse manager before</p> <p>17 Ms. Fisher at Estelle?</p> <p>18 A Mary Adams, I believe.</p> <p>19 Q Did you have any performance issues with</p> <p>20 her?</p> <p>21 A At points in her career, there have been</p> <p>22 performance issues with her.</p> <p>23 Q And did you have any --</p> <p>24 A I wasn't completely aware of them.</p> <p>25 Mr. Watson dealt with her on most of those.</p>

<p style="text-align: right;">105</p> <p>1 Q And did you have any employee complaints 2 about Ms. Adams? 3 A Not that I specifically remember. 4 Q Okay. And do you know if Ms. Adams was 5 ever put on any kind of progressive discipline 6 program? 7 A She may have been given letter of 8 expectations or she may have been -- had some verbal 9 counseling from Mr. Watson that I don't know of. 10 Q Okay. 11 A I don't know of any written, formal 12 discipline that came to my attention. 13 Q But the reason you chose to get involved 14 in Ms. Fisher's issues instead of Ms. Adams' is 15 because -- 16 A Because the Estelle Unit was failing. 17 Q Okay. And that was, again, based on 18 vacancy rates and turnover rates. 19 A And complaints I was receiving from the 20 staff that were being validated some by Mr. Watson 21 and the fact that he was not able to make progress 22 with those complaints or with the morale at their -- 23 at the Estelle facility. 24 Q Who was the supervisor after Mrs. Fisher 25 at the Estelle Unit?</p>	<p style="text-align: right;">107</p> <p>1 (Exhibit 6 marked) 2 Q (BY MS. MILLER) Okay. I apologize for 3 this copy, but this is the best we have. Let me 4 show you what's been marked as Exhibit Number 6. 5 A This is a completely different e-mail, the 6 last page of that. 7 Q Um-hmm. We can make it a separate 8 exhibit. That's fine. 9 A No. I just -- okay. 10 Q Okay. Let's go ahead and make it a 11 separate exhibit so nobody gets confused. We'll 12 just pull the back page off, make it 7. 13 (Exhibit 7 marked) 14 Q (BY MS. MILLER) In looking at Exhibit 15 Number 6, do you recall seeing that document? 16 A Yes. 17 MR. LIVELY: Did you pull the last 18 page? 19 MS. MILLER: I made it Number 7 20 because it's related but it's not the same document. 21 MR. LIVELY: Not part of the same? 22 MS. MILLER: No. 23 MR. LIVELY: Okay. Sorry. 24 Q (BY MS. MILLER) And in reviewing this 25 document from Mr. Watson, did you have a</p>
<p style="text-align: right;">106</p> <p>1 A I -- 2 MR. LIVELY: The nurse manager? 3 MS. MILLER: Nurse manager. Thank 4 you. What did I say? 5 MR. LIVELY: Supervisor. 6 MS. BERNSTEIN: Supervisor. 7 MS. MILLER: Oh, yeah. 8 A Julie Upshaw, maybe. I don't know. Or 9 Ms. Hansen. I don't know whether Judy Upshaw was 10 there in between Ms. Hansen. Ms. Hansen is the 11 current supervisor. 12 Q (BY MS. MILLER) Well, has the Estelle 13 Unit turned around? 14 A It's better. 15 Q And how would we know it's better? 16 A Vacancy rate is better. Turnover is 17 better. We don't get the complaints. We're not 18 getting the same number of complaints from the staff 19 members or from the management staff. I don't -- I 20 don't hear the same complaints. 21 Q Okay. And the vacancy rates and the 22 turnover rates, are they better industrywide or 23 throughout the units or is it just the Estelle Unit 24 that's turned around? 25 A No. They're better all over Huntsville.</p>	<p style="text-align: right;">108</p> <p>1 conversation with him about this feedback? 2 A Yes. 3 Q And what was that conversation? 4 A That is the consultation I told you that 5 went on between HR and Mr. Watson and myself when we 6 were trying to decide whether to demote Ms. Fisher 7 to staff nurse or to assistant nurse manager. 8 Q Okay. And so this was prior to the 9 demotion. 10 A I think she may have been given her letter 11 but we were -- we were still -- she had appealed and 12 we were looking at our decision. 13 Q Okay. So if she already had a letter -- 14 A I don't remember where it came in. 15 Q Okay. Look at Exhibit Number 7. 16 A Yes. 17 MR. LIVELY: That's the separate. 18 MS. MILLER: The separate page I just 19 pulled off. 20 Q (BY MS. MILLER) And do you recognize this 21 document? 22 A Yes. 23 Q Okay. And did you have a conversation 24 with Ms. Melton about this document? 25 A Yes.</p>

<p style="text-align: right;">109</p> <p>1 Q Okay. And what was that conversation?</p> <p>2 A Again, it was with Mr. Watson and human</p> <p>3 resources and myself and Ms. Melton and we -- HR</p> <p>4 thought that we needed to demote Ms. Fisher to a</p> <p>5 staff nurse, and Mr. Watson and I wanted to make it</p> <p>6 an assistant nurse manager.</p> <p>7 Q And when you say "we had a conversation,"</p> <p>8 did you have a conference call or a series of</p> <p>9 conversations?</p> <p>10 A I don't remember. I know we talked.</p> <p>11 Q Did you ever talk to more than one person</p> <p>12 at a time about this?</p> <p>13 A I don't know that we had a special</p> <p>14 meeting.</p> <p>15 Q A special conference call --</p> <p>16 A No.</p> <p>17 Q -- or a special meeting?</p> <p>18 A I don't know that we had a special</p> <p>19 meeting.</p> <p>20 Q And when Ms. Melton indicated, "We can</p> <p>21 fight this appeal now or later," how did you</p> <p>22 interpret what that meant?</p> <p>23 A I interpret that to mean that she</p> <p>24 anticipates an appeal.</p> <p>25 Q And did you anticipate an appeal?</p>	<p style="text-align: right;">111</p> <p>1 Q You can remember the bad feedback but not</p> <p>2 good feedback?</p> <p>3 A No. I didn't remember the bad feedback,</p> <p>4 either, if you remember.</p> <p>5 Q Well, I think -- I got the names Aguilar,</p> <p>6 Anderson, Darby, Lauder, and Moreau from you.</p> <p>7 A Of the people that -- of the people that</p> <p>8 had e-mailed me or had some complaints that I</p> <p>9 remembered, but during the on-site -- I don't even</p> <p>10 remember who came to the on-site interview.</p> <p>11 Q But it -- you think that Ms. Melton took</p> <p>12 notes.</p> <p>13 A I know Ms. Melton took notes.</p> <p>14 Q When did you become aware, if you did,</p> <p>15 that Ms. Fisher filed a charge of discrimination</p> <p>16 with the Equal Employment Opportunity Commission?</p> <p>17 A I don't know the date.</p> <p>18 Q Was it shortly after she filed?</p> <p>19 A I would assume.</p> <p>20 Q And what's the procedure at UTMB? Have</p> <p>21 you ever had any charges of racial discrimination in</p> <p>22 addition to Ms. Fisher's?</p> <p>23 A At the same time as Ms. Fisher's? I --</p> <p>24 Q That wasn't my question. Have you had</p> <p>25 other charges of racial discrimination in addition</p>
<p style="text-align: right;">110</p> <p>1 A Yes.</p> <p>2 Q When is the first time that Ms. Fisher</p> <p>3 complained about racial discrimination by Mr. Watson</p> <p>4 at UTMB, of which you've been made aware?</p> <p>5 A I don't remember.</p> <p>6 Q Before all this started happening.</p> <p>7 A I don't remember.</p> <p>8 Q Now, when you did this investigation, did</p> <p>9 you get any good feedback about Mrs. Fisher?</p> <p>10 A Yes.</p> <p>11 Q Yes. Okay.</p> <p>12 MR. LIVELY: You talking about the</p> <p>13 on-site?</p> <p>14 MS. MILLER: The on-site and the</p> <p>15 subsequent e-mails.</p> <p>16 Q (BY MS. MILLER) Did you get any good</p> <p>17 letters about her?</p> <p>18 A Letters? I don't remember letters but --</p> <p>19 Q E-mails?</p> <p>20 A Or e-mails, but I remember good feedback</p> <p>21 during the on-site interview.</p> <p>22 Q Okay. And who gave you the good feedback?</p> <p>23 A I have no idea.</p> <p>24 Q Okay.</p> <p>25 A I don't remember.</p>	<p style="text-align: right;">112</p> <p>1 to Ms. Fisher's?</p> <p>2 A Yes.</p> <p>3 Q And who are those charges from?</p> <p>4 A Ms. Freeman and Ms. Kelly, I think.</p> <p>5 Q Ms. Freeman and Ms. Kelly?</p> <p>6 A Ms. Freeman and Ms. Kelly, I think, were</p> <p>7 done at the same time.</p> <p>8 Q And are they a similar time frame to</p> <p>9 Ms. Fisher?</p> <p>10 A At the same time.</p> <p>11 Q Okay. And how about anything prior?</p> <p>12 A No.</p> <p>13 Q Have there been racial discrimination</p> <p>14 cases filed?</p> <p>15 A No.</p> <p>16 Q There have been no suits pending against</p> <p>17 UTMB for racial discrimination?</p> <p>18 A That I --</p> <p>19 Q Of which you're aware.</p> <p>20 A Of which I'm aware or been involved in,</p> <p>21 no.</p> <p>22 Q Okay. So what's the procedure if</p> <p>23 someone -- an employee does file an EEOC charge?</p> <p>24 What would the procedure be for letting you know if</p> <p>25 it's an employee under your supervision, either</p>

<p style="text-align: right;">113</p> <p>1 direct or somewhere down the line?</p> <p>2 MR. LIVELY: Jo, are you talking</p> <p>3 about one that's filed externally, not internally?</p> <p>4 MS. MILLER: Yes. Because the --</p> <p>5 I distinguish that as an EEO.</p> <p>6 MR. LIVELY: Okay. Okay. That's</p> <p>7 fine.</p> <p>8 MS. MILLER: Okay.</p> <p>9 MR. LIVELY: Just so we're all on the</p> <p>10 same page.</p> <p>11 THE WITNESS: I guess I'm not on the</p> <p>12 same page. So is this the --</p> <p>13 Q (BY MS. MILLER) Okay. The EEOC, the</p> <p>14 external government agency.</p> <p>15 A Okay. So not the UTMB EEOC complaints</p> <p>16 that we get that our HR investigates as EEOC</p> <p>17 complaints.</p> <p>18 Q They're EE --</p> <p>19 A We have an EEOC division on campus that</p> <p>20 comes and investigates and then we have --</p> <p>21 MS. BERNSTEIN: That's EEO. That's</p> <p>22 not EEOC.</p> <p>23 THE WITNESS: Okay.</p> <p>24 MS. MILLER: But everybody uses it</p> <p>25 interchangeably, so that's why it got --</p>	<p style="text-align: right;">115</p> <p>1 in the EEOC charge?</p> <p>2 A They did not tell me.</p> <p>3 Q At some point, did you learn what was in</p> <p>4 the EEOC charge?</p> <p>5 A No.</p> <p>6 Q Were you not curious, even?</p> <p>7 A Don't know what's in it.</p> <p>8 Q And today do you know?</p> <p>9 A No.</p> <p>10 Q Okay. At some point, somebody responded</p> <p>11 to the EEOC, so did you participate in gathering</p> <p>12 information for that response?</p> <p>13 A When I was asked for information or data,</p> <p>14 I -- or an interview, I gave it to whoever asked.</p> <p>15 Q Okay. And you still didn't know what the</p> <p>16 charges were.</p> <p>17 A No.</p> <p>18 Q So it could have been age discrimination,</p> <p>19 for all you know.</p> <p>20 A For all I knew.</p> <p>21 Q And to this day, for all you know, it</p> <p>22 could be age discrimination.</p> <p>23 A Well, I've seen the pleadings for this</p> <p>24 case, so I know --</p> <p>25 Q So you assume.</p>
<p style="text-align: right;">114</p> <p>1 MR. LIVELY: It got a little</p> <p>2 confusing.</p> <p>3 Q (BY MS. MILLER) All right. I'm speaking</p> <p>4 not of the internal investigatory part of your</p> <p>5 agency but the governmental agency, the federal</p> <p>6 agency that investigates from outside your purview.</p> <p>7 What's was the procedure for you being notified if</p> <p>8 someone has filed a charge with the EEOC.</p> <p>9 A I usually find out -- or the -- this time</p> <p>10 is the only time I know. I find out -- found out</p> <p>11 through human resources.</p> <p>12 Q And they provide you with a copy of the</p> <p>13 charge?</p> <p>14 A No. They just told me it had been filed</p> <p>15 and that I would probably be asked to provide</p> <p>16 documentation and --</p> <p>17 Q Okay. And so you didn't see a copy of the</p> <p>18 charge?</p> <p>19 A No.</p> <p>20 Q Were you told what the charges were?</p> <p>21 A No.</p> <p>22 Q So you didn't know anything about it?</p> <p>23 A No.</p> <p>24 Q You're the director of nursing for all --</p> <p>25 for all of the northern and you had no idea what was</p>	<p style="text-align: right;">116</p> <p>1 A Yes.</p> <p>2 Q Okay. But you knew that Ms. Fisher had</p> <p>3 charged Mr. Watson with racial discrimination, not</p> <p>4 necessarily when the EEOC charge, but you knew she'd</p> <p>5 made those allegations in the workplace.</p> <p>6 A I don't know that it ever came to me -- I</p> <p>7 guess through the grievances, I knew it, yes.</p> <p>8 (Exhibit 8 marked)</p> <p>9 Q (BY MS. MILLER) Okay. I'm showing you</p> <p>10 what's been marked as Exhibit Number 8 and ask you</p> <p>11 if you recognize this document.</p> <p>12 A Okay.</p> <p>13 Q Do you recognize Exhibit Number 8?</p> <p>14 A Yes.</p> <p>15 Q And did you have an opportunity to review</p> <p>16 this with Mr. Watson before it was sent to</p> <p>17 Ms. Fisher?</p> <p>18 A I think I reviewed it actually with HR.</p> <p>19 HR was also participating in --</p> <p>20 Q In preparing it.</p> <p>21 A In preparing it.</p> <p>22 Q And so as a result of what you indicated</p> <p>23 was your group consensus with HR and Mr. Watson and</p> <p>24 yourself, this letter was prepared.</p> <p>25 A Yes.</p>

<p style="text-align: right;">117</p> <p>1 Q All right. And you'll note that in 2 Exhibit Number 8, this is when she's been demoted to 3 a Nurse Clinician III, effective April 13th. And 4 was that your recommendation? 5 A At the time, yes. 6 Q And did you have an opportunity to help 7 craft some of this language or certainly provide the 8 facts that were put in here for HR? 9 A Mr. Watson provided the facts and HR does 10 a lot of the crafting. I read it and change it 11 if -- or ask for changes as I feel needed, but I 12 didn't -- I didn't have much input into the 13 document. 14 Q Just the decision -- 15 A Yes. 16 Q -- in terms of the first paragraph. 17 A Yes. 18 Q Did you read it before it went out? 19 A Uh-huh. 20 Q Okay. So to the best of your knowledge, 21 it's accurate in terms of the facts that are 22 presented. 23 A Yes. 24 (Exhibit 9 marked) 25 Q (BY MS. MILLER) Show you what's been</p>	<p style="text-align: right;">119</p> <p>1 after that time when HR instructed me not to. 2 Q Okay. So at least on 4/12, you were 3 aware -- at least when she filed her grievances, 4 UTMB was aware that there was an EEOC charge filed. 5 MR. LIVELY: On 12? 6 A HR -- 7 MS. MILLER: 4/12. April 12th. 8 MR. LIVELY: Oh, okay. I thought you 9 meant Exhibit 12. 10 MS. MILLER: No. Not there yet. 11 A HR was made aware first and I'm sure they 12 made me aware at some point in time. 13 Q (BY MS. MILLER) Okay. Now, you knew that 14 she did file grievances, though, challenging the 15 decision to demote her to a clinician, Nurse 16 Clinician number 3. 17 A I was told but I didn't always see them. 18 Q Okay. And the reason you didn't see them 19 was because they weren't responded to because -- 20 A Yes. 21 Q -- of the EEOC charge. 22 A Yes. 23 Q Okay. Looks like we've got two letters. 24 I've got new help and she did pretty good on this 25 one.</p>
<p style="text-align: right;">118</p> <p>1 marked as Exhibit Number 9. Do you recognize this 2 document? 3 A It's a standard document. 4 Q And that would be the standard way you 5 would handle it when somebody's demoted or when 6 there's some significant employment -- negative 7 employment action? 8 A This came from HR, yes. 9 Q Okay. So they always -- you always 10 give -- 11 A Yeah. 12 Q -- the person an opportunity to respond. 13 A Yes. 14 Q Okay. And you know that Ms. Fisher did 15 respond by following grievances; don't you? 16 A Yes. 17 Q Okay. Were you involved in any of those 18 grievances and the handling of any of those 19 grievances or an investigation? 20 A If I needed to answer any of those 21 grievances. At the time that an EEOC charge is 22 filed or they believe it has turned into an EEOC 23 charge or a lawsuit has been filed, HR -- under 24 their direction, we don't answer grievances or 25 appeals at that time and so I did not participate</p>	<p style="text-align: right;">120</p> <p>1 (Exhibit 10 marked) 2 Q (BY MS. MILLER) I'm going to show you 3 what's been marked as Exhibit Number 10, and do you 4 recognize that document? 5 A Yes. 6 Q Okay. And although you weren't copied on 7 it, you were aware of that before it went out. 8 A Yes. 9 Q And did you have a chance to review this 10 document also, before it went out to Ms. Fisher? 11 A Yes. 12 Q And it indicates there that Mr. Watson 13 said it was his decision to bring her back up to an 14 assistant nurse manager. Is that what this says? 15 A Yes. 16 Q And was it his decision solely? 17 A As I've said previously, it's -- was not 18 made in isolation by any one person. 19 Q Okay. And you have indicated in this 20 letter or Mr. Watson indicated in this letter what 21 her salary would be as an assistant nurse manager, 22 and that was significantly less than she was making 23 before. 24 A It was less than, yes. 25 Q Okay. And, again, she's noticed in</p>

<p style="text-align: right;">121</p> <p>1 Exhibit Number 10 that she has an opportunity to 2 appeal this. 3 A Yes. 4 Q And that's -- would be standard procedure. 5 A Yes. 6 Q And she did indeed appeal it; didn't she? 7 A I believe so. 8 Q Now, the assistant manager position -- 9 could I see that back, please? 10? 10 A That one? 11 Q She was assigned to the Wynne Unit? 12 A Yes. 13 Q Right? And who was -- she was the 14 assistant nurse manager at the Wynne Unit, then. 15 A Yes. 16 Q Right? Who was the nurse manager at the 17 Wynne Unit at that time? 18 A She was going to report directly to the 19 cluster nurse manager, Kim Roddy. 20 Q My question was: Who was the nurse 21 manager at the Wynne Unit at that time? 22 A I don't know. 23 Q There wasn't one; was there? 24 A There was -- it must have been Ms. Roddy. 25 She was assigned temporarily over the Wynne Unit as</p>	<p style="text-align: right;">123</p> <p>1 A Ms. Fisher probably -- the duties are very 2 much the same, so, yes, probably so. 3 Q Although she still had the assistant nurse 4 manager title. 5 A (Moving head up and down) 6 Q And she was still making the assistant -- 7 the pay of an assistant nurse manager. 8 A Yes, ma'am. 9 Q And she was still technically demoted. 10 A Yes, ma'am. 11 Q Was she still under disciplinary? Would 12 that be described as under disciplinary? 13 A I don't know when a demotion disciplinary 14 stops. We count it as a demotion for the next -- or 15 as a disciplinary, I would believe, for a policy for 16 the next year. 17 Q For the full year. 18 A Yes. 19 Q And so tell me how these merit raises 20 work. You know, you -- everybody gets a merit raise 21 unless they're on -- 22 A Not everybody. 23 Q -- discipline? 24 A Not necessarily. 25 Q Okay. How is it decided who gets a merit</p>
<p style="text-align: right;">122</p> <p>1 the nurse manager, and that's why Ms. Fisher would 2 have reported to Ms. Roddy. 3 Q Okay. But Ms. Roddy was temporary? 4 A Yes. 5 Q And then she, in fact, left in a few 6 months. 7 A She did. 8 Q Didn't she? And after Ms. Roddy left, who 9 was the nurse manager in charge of the Wynne Unit? 10 A I don't know who he put in charge of the 11 Wynne Unit. 12 Q Okay. 13 A I do know Ms. Warren was put in charge of 14 Ms. Fisher instead of Mr. Watson at the same time. 15 Q Okay. And, in fact, after Ms. Roddy left 16 the Wynne Unit, Ms. Fisher was the -- still the 17 assistant nurse manager over the Wynne Unit. 18 A Yes. And there was a nurse manager 19 assigned. 20 Q Let me ask the questions. And although 21 she reported to -- reported to Ms. Warren, where was 22 Ms. Warren located? 23 A In Palestine. 24 Q And, in fact, Ms. Fisher functioned as the 25 nurse manager over the Wynne Unit; did she not?</p>	<p style="text-align: right;">124</p> <p>1 raise? 2 A Disciplinary is one of the -- at a written 3 level or above is one of the considerations. The 4 other consideration is your evaluation status and 5 what you make on your evaluation. 6 Q Okay. 7 A And HR normally has a -- we also consider 8 your comp ratio and where you sit in a comp ratio 9 comparison. HR has a grid that they use and hold us 10 to for evaluation scores, compa-ratio score, and 11 discipline -- if you're in disciplinary status, 12 you're automatically -- 13 Q You just don't get one, period. 14 A -- demoted, but we use the other two to 15 help determine the amount. 16 MR. LIVELY: What did you say? Comp 17 ratio? 18 THE WITNESS: Compa-ratio. 19 MR. LIVELY: Comparables? 20 THE WITNESS: It's kind of a median. 21 It's comp -- how close are you to the median pay for 22 that code. 23 MR. LIVELY: I just didn't understand 24 that. 25 THE WITNESS: And that's a</p>

<p style="text-align: right;">125</p> <p>1 compa-ratio. 2 Q (BY MS. MILLER) I think -- I thought I 3 understood it but -- I think I do. It's a 4 formula -- 5 A Yes. 6 Q -- that they use and it's a formula, then, 7 that you put their scores in. 8 A It's very standard in HR, very standard in 9 the HR employment world. 10 Q Okay. Was there anybody that you know of 11 for that particular pay -- is it legislatively 12 defined? 13 A Not merit. 14 Q No. Okay. But is there a difference in a 15 merit raise and a regular raise? 16 A A cost of living raise. We do have cost 17 of living raises that are legislatively mandated. 18 Q Okay. And are you eligible for those if 19 you're under discipline? 20 A I think we have to give those to everyone. 21 Q Okay. And so the merit raises are -- 22 they're not assigned by the legislature? 23 A No. 24 Q Where do those come from? 25 A They come from our budgeting and planning</p>	<p style="text-align: right;">127</p> <p>1 A If you are well within your compa-ratio, 2 if you're well above the median of what your -- the 3 average pay is and you don't have a -- but a medium 4 or less than score on your evaluation, you might not 5 get a merit increase. 6 Q Or you might get a lesser one. 7 A You may get none. You can get all the way 8 to none. 9 Q Okay. Or a lesser one. 10 A And you can get anywhere from zero to 11 7 percent, I think. 12 Q Okay. All right. Thank you. Now, did 13 you work directly with Ms. Roddy when you 14 assigned -- or when Ms. Fisher was assigned to 15 Ms. Roddy? 16 A No. 17 Q Did anybody work directly with Ms. Roddy 18 on that? 19 A Ms. Warren. Ms. Warren. 20 Q Ms. Warren did? 21 A If Ms. Roddy needed any assistance with 22 Ms. Fisher, Ms. Warren was her resource. 23 Q All right. Did you have -- at that point 24 in time, did you have position descriptions for 25 every position at UTMB/TDCJ?</p>
<p style="text-align: right;">126</p> <p>1 in correctional managed care. 2 Q And that's set aside every year. 3 A We try to set aside enough every year. 4 There have been years where we haven't had enough to 5 pay merits. There are also market increases. 6 Q And what are market increases? 7 A UTMB, to include CMC, does market surveys 8 and market studies of different job codes every year 9 and we then compare that -- those results with our 10 current salaries to make sure that our salaries stay 11 within market. 12 Q So you can be competitive and -- 13 A Yes. 14 Q -- and keep your vacancy rates down and 15 your turnover -- 16 A Yes. 17 Q -- rates down. Is that correct? 18 A Yes. 19 Q Okay. 20 A And nurses just got a market increase, as 21 a matter of fact. 22 Q Okay. But the merit increases, what -- 23 give me an example of someone who is not on 24 disciplinary but who might not qualify for a merit 25 increase.</p>	<p style="text-align: right;">128</p> <p>1 A Yes. 2 Q And so there would be no need to create a 3 new position description for, say, the position that 4 Ms. Fisher was assigned to. 5 A No. Their job descriptions and post job 6 descriptions. 7 Q I just thought of something I want to ask 8 and I forgot it. Give me a minute. I have to think 9 of it. 10 MR. LIVELY: Why we don't take a 11 little break. 12 MS. MILLER: That's fine. 13 (Recess from 2:21 to 2:29) 14 Q (BY MS. MILLER) Okay. Mr. Watson is no 15 longer there. Is that correct? 16 A No. Yes. He's not there. 17 Q Tell me the circumstances of Mr. Watson's 18 departure from UTMB. 19 A I don't know the details in that he did 20 resign. He chose to resign. I do know that at the 21 time of his resignation, he was not getting along 22 well with his practice manager, one of the other 23 facility management team members, and they had had 24 some difficulty. He had had some difficulty with 25 his facility management team and decided to resign.</p>

<p style="text-align: right;">129</p> <p>1 Q Okay. And, in fact, they wrote some 2 letters and contacted you about their 3 dissatisfaction with Mr. Watson; didn't they? 4 A The entire divisional team, not just me. 5 Q Not just you. Okay. And was Mr. Watson 6 issued a letter of expectation as a result of that? 7 A Between the time they told us and they -- 8 we asked them to meet with him and the time he left 9 was very short, so, no, there was nothing. 10 Q Okay. And so how long had you been aware 11 of Mr. Watson having problems with manager? 12 A It seemed to happen quite suddenly as far 13 as the -- this last incident and the last 14 dissatisfaction. Management teams often disagree 15 over certain things and we encourage them to look at 16 different -- and come up with some sort of consensus 17 rather than complaint. So there had not been any 18 large issues prior to that, that I knew of, other 19 than regular stuff. 20 Q Okay. How long had you been aware of 21 regular stuff problems with Mr. Watson -- 22 A Oh, regular stuff? 23 Q -- and the management staff? 24 A Regular stuff goes on in management teams 25 from the time they form.</p>	<p style="text-align: right;">131</p> <p>1 Q Okay. Issues like he did things that made 2 them unhappy? 3 A That happens all the time. 4 Q Okay. 5 A That is a normal issue. 6 (Exhibit 11 marked) 7 Q (BY MS. MILLER) Let me show you what's 8 been marked as Exhibit Number 11. 9 Q And I just want to know if you recognize 10 this exhibit. 11 A Yes. I recognize it. 12 Q Okay. And what is this? 13 A This is the summary report of a 14 correctional managed care initiative for -- of a 15 focus group that we put together, a large focus 16 group, actually, that was supported by the 17 management team to identify what staff level, 18 facility staff level, people thought the largest 19 issues were in our facility. 20 Q I'm not sure I understand that. 21 A The leadership of correctional managed 22 care made an effort with this task force to give the 23 facility level, all the facility level staff, to 24 prioritize their issues for us. 25 Q And that's what's really attached here in</p>
<p style="text-align: right;">130</p> <p>1 Q Okay. What would you classify as regular 2 stuff? 3 A Oh, they fuss over what positions they're 4 going to post and the finance, who's going to pay 5 who what, and they fuss over you're not controlling 6 agency as much as you should, and they fuss over 7 various and sundry things, and those go on all the 8 time. 9 Q And do people complain to you all the 10 time? 11 A "Complain" is a hard word. Do they want 12 to vent sometimes? Yeah. 13 Q All right. And how long have people been 14 venting to you, either in writing or in person or on 15 the phone or in any manner of communication, about 16 Mr. Watson? 17 A Not any more than any other -- none. 18 Q Okay. 19 A None. 20 Q You're not really answering my question, 21 then. How long had that been happening? 22 A From the time his management team came, 23 from the time that team was formed, they had the 24 regular issues that went on. I was not notified of 25 any issues that were not expected.</p>	<p style="text-align: right;">132</p> <p>1 Roman numeral section? 2 A Yes. 3 Q Am I correct in understanding that? 4 A Yeah. 5 Q And so it goes from the highest priority 6 to the least highest? Is that the way I'm to 7 interpret this? 8 A Certainly wasn't my task force and Fred 9 Huff put this together. 10 Q But it's a directive from upper -- your 11 upper management. 12 A Sure. 13 Q Is it not? 14 A Sure. Yes. And, yes, it goes from upper 15 to lower. 16 Q Okay. So things that you were concerned 17 about in demoting Ms. Fisher, this person right 18 here, really that's Recommendation I. She had -- 19 there were excessive work loads on the people that 20 were there. Is that correct? Under her -- on her 21 staffing. 22 A Sure. Her staffing challenges. 23 Q Short staffing. She's -- and process and 24 protocols -- 25 A Um-hmm.</p>

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<p>1 Q -- that they were concerned about. A 2 Recommendation III, lack of confidence in 3 supervisors and management? 4 A Um-hmm. 5 Q That occurred at all levels; didn't it? 6 A I believe -- I don't think it specified 7 any levels. 8 Q It wasn't unique to Ms. Fisher; was it? 9 A Oh, no. It's throughout our organization. 10 Q Communication, on Number IV? 11 A Um-hmm. 12 Q That was a problem throughout the UTMB. 13 That wasn't unique to Ms. Fisher, either; was it? 14 A Communication is always number one. 15 You're right. 16 Q Team work, communication, retention, 17 training. 18 A Um-hmm. 19 Q I mean, throughout the system, in the 20 second-tier issues I'm looking at now on page 440 of 21 Exhibit Number 11, that wasn't unique to problems 22 Ms. Fisher had with her staff; was it? 23 A No. 24 Q Now, you're aware at some point in time 25 Ms. Fisher was offered a sum of money representing</p>	<p>1 MS. MILLER: Okay. I'm almost done 2 here. I need -- just need a couple -- 3 MR. LIVELY: Do you want to take a 4 little break? 5 MS. MILLER: Can we take a break 6 again, please? 7 MR. LIVELY: Sure. 8 (Recess from 2:38 to 2:44) 9 Q (BY MS. MILLER) We're not sure we got a 10 good answer on one of our questions. And when I 11 asked about after you had complaints about 12 Mr. Watson, what steps did you take with him? Did 13 you issue a letter of expectation? Did you counsel 14 him? Did you reprimand him? Did you attempt to 15 demote him? 16 A What complaints are you talking about? 17 Q Well, you indicated there were several 18 complaints from his management group. 19 A There was one complaint from his 20 management group. 21 Q Okay. 22 A And I -- he resigned shortly thereafter. 23 I did -- I had -- no disciplinary action was taken. 24 Q So you didn't take any steps because the 25 time was too short.</p>
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<p>1 some of the pay that she had been -- missed. 2 A That's what I have heard. 3 Q Okay. And you were -- were you a party to 4 that decision? 5 A No. 6 Q Okay. Did anybody consult you about that? 7 A No. 8 Q Okay. Anybody consult you about the offer 9 to reinstate her to her managerial position as a 10 nurse manager? 11 A No. 12 Q That was done without your input and 13 decision. 14 A Yes. 15 Q Okay. Were you pleased about that? Did 16 you have an opinion about that? 17 MR. LIVELY: About the reinstatement? 18 Q (BY MS. MILLER) About the reinstatement. 19 A No. 20 Q You don't have an -- didn't have an 21 opinion? 22 A No. 23 Q Yet, you were the one that decided she had 24 to be demoted? 25 A (Moving head up and down) Yes.</p>	<p>1 A Yes. 2 MS. MILLER: Okay. All right. Thank 3 you. I pass the witness. 4 MR. LIVELY: We don't have any 5 questions. We'll reserve ours for time of trial. 6 MS. MILLER: All right. Thank you. 7 (Proceedings concluded at 3:46 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<div style="text-align: right;">137</div> <div style="text-align: center;">CHANGES AND SIGNATURE</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 10%;">PAGE</th> <th style="width: 10%;">LINE</th> <th style="width: 20%;">CHANGE</th> <th style="width: 60%;">REASON</th> </tr> <tr><td>1</td><td></td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </table> <p>I, MARY GOTCHER, have read the foregoing deposition and hereby affix my signature that same</p>	PAGE	LINE	CHANGE	REASON	1				2				3				4				5				6				7				8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24				25				<div style="text-align: right;">139</div> <div style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION</div> <p>JACKIE FISHER,)) Plaintiff,)) VS.) C.A. NO. 4:08-cv-01273) UNIVERSITY OF TEXAS MEDICAL) BRANCH and DAVID WATSON,)) Defendants.)</p> <div style="text-align: center;">REPORTER'S CERTIFICATION DEPOSITION OF MARY GOTCHER AUGUST 27, 2009</div> <p>I, Lorri Lucas, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following: That the witness, MARY GOTCHER, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That the deposition transcript was submitted on _____ to the witness or to the attorney for the witness for examination, signature and return to me by _____; That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:</p>
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<div style="text-align: right;">138</div> <p>is true and correct, except as noted herein.</p> <p style="text-align: center;">_____ MARY GOTCHER</p> <p>THE STATE OF _____) COUNTY OF _____)</p> <p>Before me, _____, on this day personally appeared MARY GOTCHER, known to me (or proved to me under oath or through _____)(description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.</p> <p>Given under my hand and seal of office this _____ day of _____, _____.</p> <p style="text-align: center;">_____ NOTARY PUBLIC IN AND FOR THE STATE OF _____</p>	<div style="text-align: right;">140</div> <p>Ms. Jo Miller, Attorney for Plaintiff Mr. Sam Lively and Ms. Cari G. Bernstein, Attorneys for Defendants</p> <p>That a copy of this certificate was served on all parties shown herein. I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action. Certified to by me this 18th day of September, 2009.</p> <p style="text-align: right;">_____ LORRI LUCAS, RMR, Texas CSR 5317 Expiration Date: 12/31/09 Bayou City Reporting, Inc. Firm Registration No. 295 1135 East 11th Street Houston, Texas 77009 (713) 861-8589</p>																																																																																																								

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